

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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COURT OF APPEALS, DISTRICT OF COLUMBIA

JANUARY TERM, 1932

No. 5639

SPECIAL CALENDAR

173

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR,
APPELLANT

vs.

THE UNITED STATES OF AMERICA, EX REL. CHESTATEE
PYRITES & CHEMICAL CORPORATION

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED MARCH 24, 1932

COURT OF APPEALS, DISTRICT OF COLUMBIA

JANUARY TERM, 1932

No. 5639

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APPELLANT

vs.

THE UNITED STATES OF AMERICA, EX REL. CHESTA-
TEE PYRITES & CHEMICAL CORPORATION, APPELLEE

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA

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a Supreme Court of the District of Columbia

THE UNITED STATES OF AMERICA, EX REL. CHESTATEE
Pyrites & Chemical Corporation, plaintiff
vs.

ROY O. WEST, SECRETARY OF THE INTERIOR, DEFENDANT

At Law No. 76364

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court *Court* of the District of Columbia, at the city of Washington, in said district, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Petition for review and mandamus*

Filed February 18, 1929

In the Supreme Court of the District of Columbia

As a District Court of the United States

THE UNITED STATES OF AMERICA, EX REL. CHESTATEE
Pyrites & Chemical Corporation
vs.

ROY O. WEST, SECRETARY OF THE INTERIOR

At Law No. 76364

The petition of the United States on the relation of Chestatee Pyrites & Chemical Corporation respectfully represents:

I

The relator, Chestatee Pyrites & Chemical Corporation, is a corporation duly and legally organized and existing under the laws of the State of Georgia, a citizen of the State of Georgia, residing in the county of Fulton in said State and this petition is brought to review the final decision of the Secretary of the Interior upon a question of law which has heretofore arisen in the adjustment, liquidation, and payment of relator's claim under the act hereinafter named and against Roy O. West, a citizen of the State of Illinois, officially residing in the District of Columbia.

II

That the said Roy O. West, respondent, is Secretary of the Interior of the United States, and as such charged with the administration of the laws of the United States relative to the war minerals claims and especially section 5 of the act of March 2, 1919, and the amendments thereto, including the amendment entitled "A bill to amend section 5 of an act approved March 2, 1919, known as the war minerals act," approved February 13th, 1929, and such respondent is sued in his official capacity as Secretary of the Interior as aforesaid.

III

The said respondent as Secretary of the Interior and his predecessors in office under said section 5 of the said act as amended was and is authorized to adjust, liquidate, and pay net losses suffered by any firm, person, or corporation by reason of producing or preparing to produce pyrites in compliance with the request or demand of the Department of the Interior when such production was to supply the urgent needs of the Nation in the prosecution of the war.

IV

The Chestatee Pyrites & Chemical Corporation between the dates of the 6th of April, 1917, and the 11th day of November, 1918, in preparing to produce and in producing pyrites in compliance with the request of the Department of the Interior to supply the urgent needs of the Nation expended and incurred obligations in good faith for and upon property containing pyrites in sufficient quantities to be of commercial importance.

V

As authorized by said act of March 2, 1919, section 5, the Chestatee Pyrites & Chemical Corporation, on March 5, 1919, filed its claim with the Secretary of the Interior seeking and praying that an award be made to it under said act of its net losses for the expenditures made and obligations incurred by complainant in good faith upon property which contained pyrites as described in section 5 of said act.

VI

In the said petition or claim filed as aforesaid this relator as part of said expenditures and obligations, claimed as a loss expenditures for salaries paid its executive officers, for property taken over as a result of the request and demands of the Department of Interior, for taxes and for legal expenses.

VII

Hearings were had before the agencies established by the Department of Interior, and an award was made for other items of relator's losses, but the respondent and his predecessors in office denied any award for the items stated in Paragraph VI hereof.

VIII

Relator's losses stated in Paragraph VI hereof were denied not because of any issue of fact, but because the Secretary of the Interior held as a matter of law that such items of loss were not included within the provisions of said act.

IX

Thereafter, the Congress of the United States by the act hereinbefore described, approved February 13th, 1929, gave jurisdiction to

this court to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may arise in the adjustment, liquidation, and payment of claims under said section 5 of the act approved March 2, 1919, and amendments thereto.

X

In this case the present Secretary of the Interior, respondent herein, has refused to reopen the decisions of his predecessors in office and there has been a final decision of the Secretary of the Interior based upon the question of law for it is not disputed that relator paid and lost monies in the purchase of property, salaries, and legal expenses, and in that it is claimed by respondent as a matter of law such loss is not reimbursable under the law.

XI

Respondent and his predecessors in office erred as a matter of law in not finding that salaries, the property taken over in the nature of the purchase of property, taxes, and legal expenses lost as aforesaid by relator, were losses allowable under said act of March 2, 1919.

4

XII

Wherefore, petitioner on behalf of the relator aforesaid, prays:

1. That this court review the final decision of the Secretary of the Interior and his predecessors in office upon the question of law involved and direct said Secretary, respondent herein, to make an award of such amount as the facts show is due for purchase of property, for all salaries, and legal expenses.

2. That a writ of mandamus be issued directing the respondent, Roy O. West, Secretary of the Interior, to take jurisdiction of the claim of relator for expenditures made in the purchase of property, salaries, and legal expenses, as hereinbefore set forth and to allow such sum as may be just and equitable therefor, and to adjust and pay relator's net losses in the purchase of property.

3. That such other order or orders be entered as this court may deem necessary under the law.

4. That a rule may issue requiring respondent, Roy O. West, as Secretary of the Interior, to show cause, if any he can, why this court should not review said final decision and why a writ of mandamus should not issue as herein prayed.

CHESTATEE PYRITES & CHEMICAL CORPORATION,

By GEO. L. PRATT, *Vice President and Treasurer.*

5 DISTRICT OF COLUMBIA, ss:

George L. Pratt, being duly sworn, deposes and says that he is vice president and treasurer of Chestatee Pyrites & Chemical Corporation, and as such is authorized to file his petition and make this affidavit; that he has read and knows the allegations in said

petition, and that the same are true, except where stated on information and belief, and when so stated he believes them to be true.

GEO. L. PRATT.

Subscribed and sworn to before me this 16th day of Feb'y, 1929.

MARVIN A. TYLER, [SEAL.]

Notary Public.

EDGAR WATKINS,

Attorney, Trust Company Building, Atlanta, Georgia.

6 *Memorandum*

Ray Lyman Wilbur, as Secretary of the Interior, substituted as respondent in the place and stead of Roy O. West, on March 15, 1929.

7 *Response to the rule to show cause*

Filed March 15, 1929

* * * * *

Comes now Ray Lyman Wilbur, Secretary of the Interior, and responding to the rule to show cause herein, suggests to the court that the petition for review presents only the following question, namely, was a claimant engaged in producing or preparing to produce any of the minerals named in the act of Congress, which sustained a net loss on account of expenditures in the (a) purchase of property, to wit, land; (b) payment of taxes, (c) salaries, (d) attorney's fees or other legal services, entitled to have such losses reimbursed under the provisions of the war minerals relief act of March 2, 1919 (40 Stat. 1272), as amended?

The Secretary of the Interior decided in the negative as to each of said items, as shown by copies of the various decisions of the Secretary of the Interior and recommendations of the War Minerals Relief Commissioners marked, respectively, Exhibits A, B, C, D, and E, attached to the response to the rule to show cause in No. 76361 law, entitled the United States of America, ex rel. Chestatee Pyrites & Chemical Corporation *v.* Ray Lyman Wilbur, Secretary of the Interior, in this court, all of which exhibits are hereby referred to and made a part hereof.

8 Under the act of February 13, 1929, Public No. 728, 70th Congress, this court is vested with jurisdiction to review such questions of law as may have been decided in the disposition of petitioner's said claim by the Secretary of the Interior, and respondent makes no objection to, but on the other hand invites, a review of such questions. The petition for review presents the sole question for which petitioner prays a review herein, and it is assumed that the court will confine its review to the single question raised.

RAY LYMAN WILBUR,
Secretary of the Interior.

By E. C. FINNEY,
Solicitor, Interior Department.

O. H. GRAVES,
Assistant to the Solicitor.

Attorney General.

9

Demurrer

Filed March 15, 1929

* * * * *

Comes now the relator by its attorney and says that the answer of respondent to the rule to show cause and to the petition herein is bad in substance.

NOTE.—Points to be argued:

1. That as shown by the answer and response and the undisputed allegation of the verified petition herein, relator suffered net losses from payments made for the purchase of property, land, payment of taxes, salaries, and legal fees used in producing pyrites; that relator in making such and other expenditures complied with all the conditions of the law authorizing it to receive payment of its net losses; that respondent's predecessors in office refused to consider such net losses in the final decision making relator an award of other parts of its net losses. That from such facts such net losses for which an award was denied and payment refused are in law proper items to be included under awards required to be made by the Secretary of the Interior by the provisions of section 5 of the act of March 2, 1919, and act amendatory thereof, which statutes are referred to in the pleadings herein.

2. This court has jurisdiction and authority under the act of February 13, 1929, to determine the question of law herein involved and to enter such order herein as may be necessary to enforce
10 its conclusion on such question of law.

EDGAR WATKINS,
Attorney for Relator.

Service accepted and receipt of copy acknowledged this 15th day of March, 1929.

O. H. GRAVES,
Attorney for Respondent.

11

Stipulation

Filed September 24, 1929

* * * * *

It is hereby stipulated and agreed by and between counsel for petitioner and counsel for respondent—

(1) That the response heretofore filed herein be withdrawn and stricken from the record.

(2) That the uncertified copies of the findings of the Secretary of the Interior and the War Minerals Relief Commission and the Assistant Commissioner of War Minerals, attached to the substituted answer in 76361 law, may be considered by the court in connection with this case, with the same effect as though they were the originals thereof.

(3) That the respondent be permitted to file and serve an answer in lieu of said response, and the demurrer to the response now on file be considered a demurrer to such answer.

(4) That this case remain in statu quo upon the docket of this court until further order of the court.

Dated September 2, 1929.

EDGAR WATKINS,
Attorney for Petitioner.
O. H. GRAVES,
Attorney for Respondent.

12

Order

Filed September 24, 1929

* * * * *

In accordance with the stipulation of counsel for the respective parties in this case, dated September 2, 1929, and duly filed herein, it is this 24th day of September, 1929, adjudged and ordered:

1. That the respondent be and he hereby is permitted to withdraw from the record the response to the relator's petition for mandamus heretofore filed by him.

2. That the respondent be and he hereby is permitted to file and serve an answer in lieu of said response, and that the relator's demurrer to said response which is now on file, be permitted to stand and be considered as a demurrer to such answer.

3. That the uncertified copies of the findings of the Secretary of the Interior, of the War Minerals Relief Commission, and of the Assistant Commissioner of War Minerals, which are attached to the substituted answer to be filed by the respondent in case at law No. 76361, entitled United States of America ex rel. Chestatee Pyrites and Chemical Corporation *v.* Ray Lyman Wilbur, Secretary of the Interior, may be considered in this case by the court with the same effect as though they were original papers.

13 4. That this case remain in statu quo upon the docket of this court until further order of the court.

WENDELL P. STAFFORD,
Justice.

14

Answer to the petition for mandamus

Filed September 24, 1929

* * * * *

For answer to the petition in the above-entitled cause, the respondent, Ray Lyman Wilbur, says as follows:

1. The respondent admits that the allegations of the first paragraph of the petition were substantially correct at the time it was filed.

2. The respondent says that since the petition in this case was filed, Roy O. West, the respondent named therein, has ceased to be the Secretary of the Interior, and that this respondent, Ray Lyman Wilbur, now is Secretary of the Interior. The respondent says that

such authority and duties as were granted to or were imposed upon his predecessor by the act of March 2, 1919, and its amendatory acts, have devolved upon this respondent.

3. The respondent admits the substance of the allegations of the third paragraph of the petition.

4. The respondent admits the allegations of the fourth paragraph of the petition, upon information and belief.

5. The respondent admits the allegations of the fifth paragraph of the petition, except that he says that the petitioner's war minerals claim was not filed in due form until April 1, 1919.

6. Answering the allegations of the sixth paragraph of the petition, the respondent says that the claim filed by the petitioner
15 and known as war minerals claim No. 1, requested the payment of an item of \$25,966.67, representing salaries alleged to have been paid by the petitioner to its executive officers; an item of \$834.76 representing taxes paid by the petitioner; an item of \$585.75 representing money paid for legal services; and an item of \$750 representing a part of the purchase price of real estate acquired by the petitioner. The respondent says that he assumes that these are the expenditures referred to in the sixth paragraph of the petition, as the petition itself fails to identify the exact items of expense to which it relates. With respect to the real estate purchased by the petitioner, the respondent denies that the purchase was made at the request and demand of the Department of the Interior.

7. The respondent admits the allegations of the seventh paragraph of the petition.

8. Answering the eighth paragraph of the petition, the respondent says that he is not informed whether payments of the character and in the amounts claimed by the petitioner, as hereinbefore stated, actually were made by it as a matter of fact, and he says that he will demand strict proof of the fact should its proof become necessary.

The respondent says that he admits, however, that the then Secretary of the Interior held as a matter of law that the items of alleged expense in question could not be considered as losses under the provisions of the act of March 2, 1919.

9. The respondent admits the allegations of the ninth paragraph of the petition.

10. Answering the allegations of the tenth paragraph of the petition, the respondent says that he does not admit that the petitioner paid and lost money in the purchase of property, in salaries, and in legal expenses. On the other hand, he expressly denies that any loss resulted to the petitioner by reason of paying money on
account of the items specified.

16 11. The respondent denies that he, or his predecessors in office, committed the error of law alleged in the eleventh paragraph of the petition.

12. Answering the entire petition, the respondent says that after the Chestatee Pyrites and Chemical Corporation had filed its war minerals claim No. 1, as aforesaid, the claim and all of its items were carefully examined by the War Minerals Relief Commission and by the respondent's predecessors in office, the former Secretaries of the Interior, and that a full opportunity was given to the claim-

ant to present all the facts in connection with its claim and to be heard with respect thereto, and that a number of hearings with respect to the claim actually were had both before the War Minerals Relief Commission and the said former Secretaries of the Interior.

The respondent says that as a result of such examination and hearings, as aforesaid, the War Minerals Relief Commission, under date of June 5, 1919, recommended to the then Secretary of the Interior that an award in the amount of \$133,528.46 be made to petitioner, and stated that the amount of the payment recommended was the entire sum for which the United States Government appeared to be under moral or statutory obligation.

The respondent says that thereafter, on August 8, 1919, the then Secretary of the Interior, the Hon. Franklin K. Lane, found in favor of the petitioner for a sum in excess of that recommended by the War Minerals Relief Commission, and made an award to it of \$219,607.90.

The respondent says further that on October 15, 1919, Secretary Lane increased the amount of his award to \$223,529.17, and that that amount was paid to and actually received and accepted by the petitioner.

The respondent says further that thereafter, as the result of a further consideration of the petitioner's claim by the War Minerals Relief Commission and the Hon. Albert B. Fall, the then
17 Secretary of the Interior, the Secretary made an additional award of \$469,784.62 in the petitioner's favor, which amount was paid to and actually received and accepted by it.

The respondent says that Secretary Fall in making his award as aforesaid, made the following statement:

"I have investigated this case and listened with great interest and a large degree of sympathy to the statements made by counsel for the claimants, and to the arguments advanced with reference to the matter of allowing interest upon this claim; additional allowance for services, and an allowance of an increased amount for compensation for the free-stimulation plant.

"After full consideration, I am confident that the conclusions reached by the commission are as nearly correct as it is humanely possible to arrive at a just and equitable sum to be awarded in relief, I therefore, find myself impelled to make the award as recommended, in the sum of four hundred sixty-nine thousand, seven hundred eighty-four dollars and sixty-two cents (\$469,784.62)."

The respondent says that he believes from the record and evidence in the case, that the aforesaid statement of Secretary Fall was correct, and that the amount of the additional award then made was as nearly correct as it was humanely possible to arrive at a just and equitable sum to be awarded in relief, and that the entire amount of \$693,413.79 which was paid to and received and accepted by the petitioner as aforesaid, represented all that the petitioner was justly and equitably entitled to receive under the terms of the act of March 2, 1919.

The respondent says that so far as he is advised, the petition in this case, as stated in paragraph six of this answer, refers to payments said to have been made by the petitioner comprising \$25,966.67 salaries of its executive officers; \$834.75 taxes; \$585.75 for legal

18 services; and \$750 for certain real estate acquired by the petitioner, which were all disallowed as losses in the adjustment of its claim.

With respect to the item of \$25,966.67, the respondent says that the Chestatee Pyrites and Chemical Corporation was organized and incorporated by N. P. Pratt and George L. Pratt, who thereupon became and continued to be its sole stockholders. The respondent says that N. P. Pratt and George L. Pratt elected themselves to be the executive officers of the corporation, and voted and paid to themselves from the funds of the corporation the sum of \$25,966.67 as executive salaries.

The respondent says that the interests of the corporation and its two stockholders were so closely identified that in filing war minerals claim No. 1, as aforesaid, the claim was filed in the names of the Chestatee Pyrites and Chemical Corporation, N. P. Pratt and George L. Pratt jointly. The respondent also says that the warrants issued in payment of the two awards made to the petitioner were drawn in favor of the Chestatee Pyrites and Chemical Corporation, N. P. Pratt and George L. Pratt jointly.

The respondent says that in considering and adjusting the said war minerals claim No. 1, the War Minerals Relief Commission and the former Secretary of the Interior found that the said sum of \$25,966.67 paid to themselves by N. P. Pratt and George L. Pratt did not represent a loss suffered by the corporation, or by its stockholders in producing or preparing to produce pyrites, and that it was not just and equitable that the amount so paid should be repaid by the United States. Both the War Minerals Relief Commission and the former Secretary of the Interior found, however, that it was just and equitable that a per diem allowance of \$4 each should be made to N. P. Pratt and George L. Pratt for the period of 508 days, in lieu of salary, and that the amount of \$4,064 accordingly was
19 awarded on that account and included in the payment made to and actually received and accepted by the corporation and its stockholders, as aforesaid.

The respondent denies that the disallowance of the item of \$25,966.67, as aforesaid, constituted an error of law, because he says that the act of March 2, 1919, did not contemplate that the executive officers of a corporation, who also were its sole stockholders, might withdraw the funds of the corporation, for their own benefit, and thereafter demand repayment of the same on behalf of the corporation in the guise of a loss sustained by it in producing and preparing to produce manganese.

With respect to the item of \$834.76 paid for taxes, the respondent says that the amount in question was paid in the discharge of a burden imposed by the State of Georgia, or one of its political subdivisions, for the support of the State or for public purposes, that it did not represent the payment of a debt, and that the payment being made in the discharge of an obligation of citizenship did not and could not involve a loss. The respondent says further that it would be against public policy for the United States to directly or indirectly assume the burden of a tax assessed by a State, or its political subdivisions, against one of its own citizens. The respondent says further that he is advised that the taxes in question were

assessed to, or assumed and paid by the petitioner as lessee pursuant to an agreement entered into with the lessor of the taxed land prior to the period covered by the act of March 2, 1919, and that, therefore, the payment made by the petitioner in any event was not within the scope of that act.

With respect to the item of \$585.75 said to have been paid for legal services, the respondent says that attorney's fees represent the personal expense of the client who pays them. The respondent says further that he is informed and believes that the legal services represented by the payment aforesaid, as a matter of fact, 20 were rendered in connection with a matter which had no relation to a production or a preparation to produce pyrites by the petitioner, and accordingly were not within the terms of the act of March 2, 1919.

With respect to the item of \$750 said to have been paid for real estate purchased by the petitioner, the respondent says that he is informed and believes that the petitioner purchased the fee simple title to a certain tract of land for \$1,590. Thereafter the petitioner removed the timber from the land which it used in connection with its mining operations. In presenting its war minerals claim as aforesaid, the petitioner estimated the value of the timber removed from the land at \$840, and claimed repayment for the balance of the purchase price of the land, amounting to \$750, although it still continued to retain title to the land in fee simple. The respondent says as a matter of fact that no loss resulted to the petitioner by reason of this transaction.

The respondent says, therefore, that no error of law was committed by any of the former Secretaries of the Interior in refusing to make an award in the petitioner's favor because of any of the items of its claim which are involved in this proceeding, and that no error of law was committed by the respondent in affirming and adhering to their decisions in that respect.

Having fully answered the petition, the respondent asks to be hence dismissed with costs.

RAY LYMAN WILBUR,
Secretary of the Interior.

By JOS. M. DIXON,
Acting Secretary of the Interior.

21 DISTRICT OF COLUMBIA, ss:

Jos. M. Dixon, being first duly sworn, on his oath says that he has read the foregoing answer by him subscribed, and that he knows the contents thereof, and that the matters therein stated of his own knowledge are true, and those stated upon information and belief he believes to be true.

JOS. M. DIXON.

Subscribed and sworn to before me this 13 day of August, 1929.

W. BERTRAND ACKER, [SEAL]
Notary Public in and for D. C.

22

Filed January 7, 1932

Law 76364

UNITED STATES DEPARTMENT OF THE INTERIOR,
Washington.

It is agreed that the attached exhibits A, B, C, D, & E are true copies of exhibits referred to in the answer and filed therewith, and may be filed and used the as originals x in Docket No. 76364—*Chestatee &c. v. Wilbur.*

O. H. GRAVES,
Atty. for Dept.
EDGAR WATKINS,
Atty. for Relator.

JANUARY 7, 1932.

23

EXHIBIT A

Commissioners: John F. Shafroth, Martin D. Foster, Philip N. Moore.

DEPARTMENT OF THE INTERIOR,
WAR MINERALS RELIEF COMMISSION,
Washington, June 5, 1919.

The honorable the SECRETARY OF THE INTERIOR.

DEAR MR. SECRETARY: In the matter of claim No. 1, *Chestatee Pyrites and Chemical Corporation and N. P. Pratt and George L. Pratt*, referred by you to this commission for investigation, your commission beg to recommend an award of \$133,578.46 as the entire sum for which the United States Government bears any moral or statutory obligation.

Very truly yours,

(Signed)

JOHN F. SHAFROTH,
M. D. FOSTER,
PHILIP N. MOORE,

Commissioners, War Minerals Relief Commission.

[Copy]

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EXHIBIT B

DEPARTMENT OF THE INTERIOR,
Washington, Aug. 8, 1919.

In re *Chestatee Pyrites & Chemical Corporation, N. P. Pratt and George L. Pratt. Claim No. 1.*

The above is a claim under the war minerals relief act (section 5, act of March 2, 1919, 40 Stat. 1274). The law authorizes compensation for losses incurred in the production of pyrites during the war due to stimulation by the Government.

Here there was such stimulation commencing June 18, 1917. I have reviewed the record and brief filed and an award of \$219,607.90 is made. This is based upon the report of the War Minerals Relief Commission, but with 56.6 as the percentage of stimulation and a partial allowance of the financing item.

Nothing has been allowed for the railroad since it appears that the rails were bought prior to the stimulation and the correspondence indicates the claimants' purpose to build prior to the Government's request. No allowance has been made for the salaries.

(Signed) FRANKLIN K. LANE, *Secretary*.

25

EXHIBIT C

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, October 15, 1919.

In re Chestatee Pyrites and Chemical Corporation, N. P. Pratt and George L. Pratt. Claim No. 1.

In the above claim under the war minerals relief act, section 5, act of March 2, 1919 (40 Stat. 1274), an award of \$219,607.90 was made August 8, 1919. Nothing was there allowed for the railroad.

Additional testimony as to the railroad has now been submitted. The claimants have also urged that the amount of expenditure to which the percentage of stimulation was applied should be increased.

I have reviewed the record, the report of the War Minerals Relief Commission, and the exceptions thereto filed. No reason is found for disturbing the prior ruling as to the railroad. To the amount of expenditure upon which the percentage of stimulation (56.6%) is applied, the sum of \$6,928.04 is added.

The award is accordingly increased to \$223,529.17.

(Signed) FRANKLIN K. LANE.

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EXHIBIT D

SEPTEMBER 22, 1922.
JB-WCS

Claim No. 1, The Chestatee Pyrites and Chemical Corporation,
Atlanta, Georgia

Memorandum in review of:

This claimant had a partially developed plant at the time of Government interference, and the claim represents the loss due to the expanded operations under Government stimulation. It was the first claim considered under the original war minerals relief act.

The commissioners had had no experience in dealing with big, complex claims, and therefore no rules or policies had been tested by actual application. They attempted to fix the loss through percentages; that is, by basing it upon the proportion the amount claimant meant to expend and produce under his own nonstimulated plans bore to the estimated expenditure and production of the bigger mill, under Government stimulation. The result was that the percentage fixed by the commission was increased by the Secretary and, later, by the latter still further increased, with the claimant insisting that all were too low, and that the percent should apply to all the expenditures instead of to only a part of them.

It may be said now, without criticism of the former commis-
sion that the plan was unsatisfactory in some respects. Per-
centages and ratios were confusing, and the element of doubt

27

was too great. A more easily understood and more workable plan was adopted in the consideration of claims which came later.

In the present review, the former plan is not ignored entirely, as will be seen by the auditor's report, but the claim is considered practically *de novo*, in the belief that it is better to apply rules which have grown out of experience, and with which examiners are familiar, than to merely consider the alleged errors of a plan which is unfamiliar, because abandoned long before the amended act, under which we are not considering these claims, was passed. The auditor was directed to audit this claim in the same manner that all claims are now being audited. This meant that he was to treat the company as a going concern on the date of stimulation; that any loss or profit prior to that date, concerning which even claimant and counsel are not in perfect agreement, was claimant's own, with which the Government is not concerned; that all expenditures during the stimulation period, or which properly should be charged to the period, were to be listed; that deductions for items not allowable and salvage were to appear, and that the net loss was thus to be shown.

There may be controversy, later, over the items disallowed, or the salvage, but the plan itself can at least be understood, and the
 28 points in controversy, if controversy should follow, will not only be reduced in number, but they will be set out plainly. By this method the Government takes no account of the operations before stimulation, when it was not responsible for either losses or profits, but ascertains the loss during the stimulated period, for which it is responsible, by simply deducting from the expenditures for that period the items which must be disallowed, the receipts, and the salvage. Pursuant to these instructions the claim was audited, and the auditor's report, which is submitted herewith, shows that the task was performed with painstaking care and intelligence. Based upon that report, but not agreeing with the conclusions in every particular, the expenditures, deductions, and net loss are hereinafter set out.

It will be observed that the expenditures for the building of the railroad, which heretofore have been denied, are allowed. Considered under the amended act, and in the light of the accepted practice, there is no reason whatsoever why the expenditures for this railroad should not be compensated. Claimant, before stimulation, may have had it in mind some day to build the road, and he may have taken advantage of the opportunity to purchase some rails at a low price, but there is not the certainty that he would ever
 29 have built it. A fair deduction would be that the plan to build the road had been abandoned. There is the certainty that the road was built after Government stimulation; that Secretary Lane approved if he did not direct the building; that it was necessary in connection with the mining project, and claimant testifies that but for such stimulation and such urgency the expenditure would not have been made. The record is so clear, and so complete as to details, that there can be no reasonable doubt as to Government responsibility.

DEDUCTIONS

All interest charges have been deducted. It is not believed that the act contemplates the payment of interest on borrowed capital.

Counsel for claimant has filed a brief on this point in which, after acknowledging that in claims against the Government, interest is not allowed before judgment, he cites exceptions to the rule and attempts to place the beneficiaries of this act in the excepted class. He points to the contributions made by citizens in aid of the Revolutionary War, and the War of 1812, wherein interest was allowed when, finally, these advances were repaid by the Government. But the claimants under the war minerals relief act do not stand in the same moral relation as did the persons who advanced money to the Government during the Revolutionary War or the War of 1812.

30 The difference is that the early patriots placed their money at the disposition of their Government without expectation or chance of profit, but with the probability that all would be lost, while claimants under the war minerals relief act engaged in a business enterprise, with hope and expectation of profit. The Government now, because it publicly urged increased production of the ores, voluntarily repays net losses in cases where the hope of profit was not realized. The difference is plain.

Counsel, further, cites the case wherein the State of New York, by a decision of the Supreme Court, was refunded interest on bonds, which were issued to equip troops for the Civil War. Here, however, there was between the State of New York and the Government what amounted to a definite contract, Secretary Seward having wired the New York State officers to raise and equip the troops and stating that the Government would refund to the State the expenses incurred. Also, Congress had passed an act authorizing the refund. That is why the New York case was made an exception to the rule laid down by the Supreme Court, the language of which rule is as follows:

“Interest is not to be awarded against a sovereign government unless its consent to pay interest has been manifested by an act of its legislature, or by a lawful contract of its executive officers.”

There were present in the New York case what the Supreme Court held to be a “lawful contract,” which contemplated the repayment of interest, and the necessary legislative action.

31 Counsel also bases the claim for interest upon the equity provision of the war minerals act. The equity provision is a broad provision. The act, it is supposed, would be administered in equity even though the provision were absent. But the provision which says that no profits shall be allowed, is a specific provision, not to be ignored on the ground that “equity” would prevent its observance. It is because of this specific provision that interest on an operator's own money can not be allowed, for such compensation would be in the nature of a profit to him. If, therefore, interest is to be allowed to the man who operated on borrowed capital, it must be upon the theory that he is to be treated differently from the man who risked his own money in the enterprise; that claimants who had no capital of their own, but had to borrow, are to be made a favored class. If the provision of the act relating to profits prevents an allowance for interest to the man who used his own money, it applies to all other claimants as well. If Congress had intended to allow interest on borrowed capital undoubtedly it would have provided for interest on invested capital, whether borrowed or not. In

prohibiting the payment of interest on invested capital, by including the no profits provision, the payment of interest on borrowed capital was likewise prohibited. It is difficult in law or practice to place the man who has no capital on exact footing with the
32 man who has. The disadvantage of having no capital is recognized in the business world, and the borrowing operator always is compelled to stand the charges which lack of capital entails. Unless it is to be held that interest on capital is not profit, the conclusion is inevitable that the interest loss sustained through the borrowing of capital is the operator's own loss and can not here be compensated.

Would apply to purchase of property

The arguments which ordinarily are used to support the repayment of interest apply with equal force to reimbursement for purchase of property. How, it is asked, could a miner without capital be expected to respond to the appeals of the Government for ore if he did not borrow the money, and, having borrowed it and produced the ore, why is the interest he paid not a legitimate item of expenditure under the act? Might it not as well be asked how a man having no mining property could answer the appeal unless he purchased or leased mining lands, and if he did so purchase or lease lands and thereby produced ore, would the purchase price not be a legitimate expenditure?

But if the Congress had contemplated reimbursement for purchase of property, many more millions than are represented in the war minerals fund would have been appropriated, and pro-
33 vision would have been made for taking over of title to the property. It is a wrong inference to say that, in issuing appeals for increased production, the Government assumed a moral obligation to supply men with capital, to pay the cost of securing capital, or to take over mining lands at cost to the owners thereof. It is equally erroneous to read into the act a legal direction that expenditures of this character be compensated. When Congress permits the payment of interest by special act it is subject to conditions, such as rate of interest, period of time, etc., none of which conditions appear either in the original or the amended act. At the time the act was amended, last November, Congress and claimants well knew that the act was interpreted by those who were administering it to prohibit repayment for interest. Then was the time the question should have been raised and congressional expression secured. It has been contended before this writer that the Government, in publicly urging increased production of these ores and not at the same time furnishing or offering to furnish the capital required, thereby assumed the obligation to repay interest charges where borrowing was necessary. Conversely, may it not be said that by not offering to furnish capital the Government gave notice that the matter of capital was the miner's own affair. The argument is further met by the fact that the Government permits the payment of interest through specific legislative action and not through obligations created as described.

Financing charges

If, then, the general published appeals for increased production did not relate to the furnishing of capital to those who did not have it, or the payment of interest to those who did, and if the act which followed contains no specific provision for financing charges, the repayment of the latter must find its authority in the wide discretion given the Secretary of the Interior in the administration of the act. There is no legal prohibition of the allowance of a financing charge, and if it were shown that the Government had specifically directed claimant to finance his operations substantially in the manner in which they were financed, the Secretary might, in his discretion, allow any part or all of such expenditure. And in the event of such allowance, it would not mean that a hard and fast rule had been adopted which would make repayable financing charges due alone to general published appeals for increased production, nor would it mean that bonuses or promotion charges which, in fact, were only excessive, usurious interest charges, are to be compensated. It would only mean that in claims where the Government through its agents was a party to the financing, the fact might be taken into consideration by the Secretary in fixing the award.

In this particular case, as is testified, the then Secretary
35 of the Interior personally requested one of the claimants to operate the properties on a big scale, which claimant at first declined to do, unless the Government should underwrite the venture. This, of course, was impossible, and, after some delay, the Secretary, through his personal agent, requested Ashcraft and Wilkinson to use their influence to induce claimant to enlarge his operations, and further, he asked them to assist in financing him. Ashcraft and Wilkinson did so use their influence, and with success, and did finance claimants, for which financing claimant is obligated for a large amount. Claimant contends that the plan adopted was not more expensive than would have been the raising of the money by the sale of bonds, or through any of the other promotion plans which were in use during the war period. This, in substance, is claimant's side of the matter, and he asks that the cost of financing be compensated.

Ashcraft and Wilkinson were prominent in financial affairs. They had made a great deal of money in pyrites dealings because of the war. It is established that they urged claimant to enlarge his enterprise, and that they volunteered to secure the money therefor. They may have acted partly in response to the request of the Secretary, partly through patriotic motives, and partly because of the contract which they hoped to make and did make with claimant. Claimant was to pay 6 per cent on the loan to the bank
36 and, in addition, was to pay Ashcraft and Wilkinson from fifty cents to one dollar a ton upon the entire production of the new mill up to 335,000 tons. As it was confidently expected that the new mill would run to its full capacity, they stood to make hundreds of thousands of dollars in the deal. What they really did in consideration of the contract was to assume a risk of loss. If they had merely pointed the way by which the money was secured, without incurring any risk themselves, the contract would be out-

rageous. But the record shows that while they assumed a risk, they took pains to make the risk as small as possible. They made the contract with the Chestatee Company but in addition to the company's notes required the personal endorsement of the notes by claimants. They took what amounted to a lien upon the property of the claimant company and the ore in the ground. And in order to make the chance for profit as large as possible, claimant was required to make Ashcraft and Wilkinson the exclusive sales agent for the ore, for which they were to be paid a brokerage fee of 25 cents per ton. There were four successive contracts by which the \$695,000 was furnished the claimant company, the last being more favorable to Ashcraft and Wilkinson than those which preceded it. It provided for the payment of \$250,000 to Ashcraft and Wilkinson

for their services in securing a loan of \$695,000, and in addition, for a brokerage fee of 25 cents per town on the ore.

This tells the story. It shows that the amount to be paid, not considering the brokerage fee, was more than 35 per cent of the loan—a per cent for financing for above that allowed in the wild cat schemes with which the country is familiar. To consider the financing charge in comparison with the estimated receipts for ore, as the auditor has done, obviously is not the proper view. The correct way to determine whether or not a financing charge is too high, is to compare it with the amount of the loan. If, for instance, the receipts from the sales of ore should amount to \$5,000,000, the per cent of the financing charge contained in this contract as compared with the \$5,000,000 would be very small, but the fact would still remain that this claimant was to pay Ashcraft and Wilkinson \$250,000 for a loan of \$695,000. When a man in the ordinary course of business secures a loan, the commission is based upon the amount of the loan and not upon the value of the product which the borrower, as a result of the loan, might place upon the market. Of course, Ashcraft and Wilkinson are not the claimants here, although they will benefit more than will the claimants if an award be made, and whether or not they drove a hard bargain with claimants is not essential except as it bears upon the recognition of this financing contract as an obligation incurred and to be compensated. The real question is:

Was the financing contract such an obligation as should be repaid by the Government in whole or in part?

As to the allowance of the entire amount, there can be no question that it would not be warranted. It would mean payment to Ashcraft and Wilkinson for ore still in the ground, and which probably never will be mined. The unfulfilled part of the contract, if ever it was to be recognized under the act, was invalidated when Ashcraft and Wilkinson, having a lien upon the ore in the ground, consented to its disposal. When they took part in disposing of all the property of the Chestatee Company, and winding up its affairs, they were estopped from holding that company, or the Pratts, liable for the fulfillment of the contract. It is an error to hold that the provision in the act relating to obligations incurred means that any obligation whatsoever must be compensated. The language should be interpreted in connection with the language of the entire act. The obligation must relate to producing or preparing to produce

ore, and it must be a reasonable obligation, such as would be incurred by a reasonably prudent man. Moreover, the amount that would be repayable would be the amount for which the creditor could secure judgment in a court. The act contains a few mandatory provisions, the meaning of which can hardly be misconstrued, and the general administration is left to the wise discretion of the Secretary of the Interior for the purpose, undoubtedly, of preventing the payment of ridiculous, unfounded, or unreasonable charges and to give to claimants the amounts to which they are in justice and equity entitled.

39 In the first award, Secretary Lane allowed \$18,112.00 for financing. He reached this amount by the following process: He first found that the per cent of stimulation which should be granted claimant was 56.6. On that basis \$320,000 of the loan was considered admissible. He held that 10 per cent would be a reasonable allowance for financing, and, applying the 56.6 per cent of stimulation to 10 per cent of \$320,000, the financing allowance was found to be \$18,112.00.

I am of the opinion that 10 per cent is a reasonable allowance for financing in this particular claim. The amount of money required to meet the Government demands was so great as to make the securing of it by ordinary means almost impossible. The activities of the Government to induce Ashcraft and Wilkinson to finance claimant, so that war needs might be met quickly and in large measure, were personal, direct, and effective. The fact that Secretary Lane, who himself had a part not only in the stimulation of claimant but, through suggestion, in the financing, recognized that Ashcraft and Wilkinson had performed a service to the Government, is evidence of that service; and while the contract which they had with claimant furnishes no basis for fixing the amount to be allowed, a fair adjustment can be reached by a study of all the event connected with the transaction. Secretary Lane was warranted in making an allowance of 10 per cent, but the application of the 56.6 per cent both as to the amount of the loan and the 10 per cent itself operates to bring the allowance less than it should be. The total amount of this loan was \$695,000. Of this amount \$50,000 was used in the period before stimulation. The 10 per cent for financing should apply only to the amount of the loan which went into stimulated operations, namely, \$645,000, so that the allowance which is here recommended is \$64,500.00.

Salvage

The question of salvage is perplexing in nearly all claims, but here it is unusually complex and difficult. The claimant, when submitting the claim, estimated the usable value of all the property at \$200,000, but that was not intended to be an estimate of the salvage value, for it was stated at the time that there was no salvage value, because by the terms of the lease the machinery and equipment, or practically all of it, could not be removed from the property. Claimant, it appears, in offering to accept a deduction of \$200,000, did so in the belief that the equipment which they would have

used in their own nonstimulated operations, would have cost that amount, and in consenting to such deduction it was on the supposition that there would be no deductions for interest, salaries, etc. It was, in fact, a settlement proposition. Passing from the conjectural, let us see what was actually realized when this property was disposed of to the Piedmont Corporation. The claimant company had a floating indebtedness of \$50,000, which it could not pay and which threatened to force it into bankruptcy. The Piedmont Corporation assumed this debt. The Piedmont Corporation, as a further consideration, transferred to claimant company \$150,000 of its preferred stock. The question is, is this stock worth its face value? Claimant asserts that it is worth nothing at the present time, and, in view of the demoralized condition of the business which the Piedmont Corporation was or is to carry on, there are good grounds for the contention. But it is the policy to ascertain the value at the time of the armistice, and, therefore, the claimant's own statement on that point is taken for a basis. The total face issue of the stock was \$1,000,000. If this stock represented an actual property value of \$200,000, it was worth, as may readily be computed, 20 cents on the dollar, and the value of the \$150,000 in stock transferred
42 to the claimant company would be \$30,000. I am of the opinion that this plan of ascertaining the deductible value of the stock, is as equitable as any that might be adopted. The items of sales of equipment previously must be added to the foregoing salvage, but they are not in dispute and are set out in the schedule of deductions.

Then comes the equipment which was purchased before stimulation, but used during stimulation, which the auditor presents for consideration in connection with salvage. As a matter of history the auditor states that in the Denison claim, No. 30, the former commission allowed the cost of equipment purchased before stimulation and took no account of salvage, and he thinks that the Chestatee claim is on all fours with the Denison claim. If the auditor is right, the action of the former commission will not be accepted as a precedent to be followed, and the Denison claim, which is still before the commissioner for review, will be adjusted in harmony with the principles that are here being applied to the Chestatee claim. It should be stated in this connection, however, that examiners for the present commissioner regard the two claims as materially dissimilar. The soundness of these diverging views will have judgment when a recommendation as to the Denison claim is made.

The plan of the present commissioner in adjustment of claims where the plant was a going concern at the time of stimulation, and the reasons therefor, may be stated in a few words.
43

Equipment and machinery purchased before stimulation but used during stimulation, will be given a liberal rental or depreciation credit only. The reason why its purchase price will not be allowed is because the Government was in no wise responsible for its purchase, and the claimant at the moment he purchased the property had incurred any loss that might come, and that loss was therefore his own. To allow for its purchase would be in fact to allow for the purchase of property.

Supplies which were purchased prior to stimulation and used during stimulation and thereby made completely valueless, such for instance as coal, will be compensated in full.

To hold that when the Government interfered it destroyed claimant's estate and deprived him of probable profits, which should be compensated, as has been suggested, is not sound. First, that would mean an allowance of profits, which is specifically prohibited by the act, and the profits would be merely estimated profits which might never have been realized. Second, the Government only says to claimants that it will reimburse the actual net loss that was sustained for the stimulation period.

In this review it is held that the claimant is fairly entitled to a rental or depreciation allowance of 20 per cent of the machinery and equipment purchased before stimulation but used during stimulation, and the entire purchase price of the supplies which were so used or consumed and deprived of all salvage value. It is understood, of course, that ordinarily there must not be a deduction for salvage on equipment and machinery where rental only is allowed. In this claim the equipment and machinery so rented was a part of the plant as finally sold and salvaged, but that fact was considered when the amount of salvage of the entire property was fixed, and therefore the 20 per cent now mentioned for rental is not subject to increase on account of salvage. The amount of the prestimulation expenditures to which the 20 per cent rental should apply is \$132,139.31, which makes an allowance of \$26,427.86 for that item. The cost of miscellaneous items in the same period, which should be compensated in full, is \$16,901.07.

A subsistence allowance of \$4,032 for G. L. and N. P. Pratt was substituted for the salary charge of \$25,966.67, which appears in the claim. A straight salary allowance to a partner or part owner of a property would mean the granting of a profit to him. Subsistence is allowable, but if he is to receive compensation above subsistence it must come from profits earned by the corporation or partnership.

The claim as adjusted, according to the foregoing decisions, is as follows:

45 Expenditure:

June 18, 1917, to Nov. 11, 1918 agreed upon by the auditor for the Government and the auditor for claimant----- \$784,791.14

Deductions:

Ore sales-----	\$82,077.87
Executive salaries-----	25,966.67
Interest-----	40,795.13
Taxes-----	834.76
Real estate-----	750.00
Legal services-----	585.75
	151,010.18

Salvage:

Salvage for stimulation period on basis of \$80,000 from Piedmont Corporation-----	47,546.73
Cash received for sundry equipment-----	7,695.00
	55,241.73
	206,251.91
	578,539.23

Add allowances:

Rents from property included in deductions in operations a/c -----	\$2, 881. 63	
Per diem G. L. and N. P. Pratt, in lieu of salary, 508 days each at \$4 -----	4, 064. 00	
Rental or depreciation on prestimulation plant, etc., 20 per cent of \$132,139.31 -----	26, 427. 86	
Misc. items, tools, material, for water supply, etc., purchased before stimulation but used in the stimulated operations and their value thereby totally destroyed -----	16, 901. 07	
Financing contract, 10% of \$645,000 -----	64, 500. 00	
		\$114, 774. 56
		693, 313. 79
Less award heretofore made and paid -----		223, 529. 17
Net loss -----		469, 784. 62

46 I am of the opinion that the net loss for which claimant should now be compensated is \$469,784.62, and I recommend an additional award of that amount.

In reviewing this claim I have been struck by the magnitude of the expenditures and the possibilities of output. The very bigness of it tended to lead an examiner unconsciously to fail to give claimant full justice, but that I have tried to overcome. If I have seemed to deal with it liberally, it was because the record showed that the then Secretary of the Interior, realizing no doubt that this property presented opportunity for the biggest production of pyrites in the entire country, used every means in his power to persuade the claimant to develop it. It is true that he could not and did not guarantee claimant against loss, but his full influence short of underwriting the project was exerted. Always, too, there was a realization that claimant, in responding to Government request, will suffer great financial loss, notwithstanding the generous provisions of the war minerals relief act. It would be too much to say that the recommendations contained herein offer a perfectly accurate adjustment, but it is believed that they approach justice and equity as closely as can be expected in view of the complexity of the claim.

(Recommends additional award of \$469,784.62.)

(Signed) JOHN BRIAR,
Assistant Commissioner.

47

EXHIBIT E

THE SECRETARY OF THE INTERIOR,
Washington, September 28, 1922.

The Chestatee Pyrites and Chemical Corporation,
Atlanta, Georgia. Claim No. 1

Additional memorandum by the Secretary, to be attached to the records of the assistant commissioner as part of the record herein.

I have investigated this case and listened with great interest and a large degree of sympathy to the statements made by counsel for the claimants, and to the arguments advanced with reference to the matter of allowing interest upon this claim; additional allowance for

services, and an allowance of an increased amount for compensation for the free-stimulation plant.

After full consideration, I am confident that the conclusions reached by the commission are as nearly correct as it is humanely possible to arrive at a just and equitable sum to be awarded in relief. I, therefore, find myself impelled to make the award as recommended, in the sum of four hundred sixty-nine thousand, seven hundred eighty-four dollars and sixty-two cents (\$469,784.62).

If the Congress contemplated the payment of interest upon this claim, as has been suggested in argument, then this award, of course, does not preclude remedial action by the Congress of the United States acting directly.

(Signed)

ALBERT B. FALL,
Secretary of the Interior.

ABF/C

48 (Indorsed:) January 19, 1932. Let this amendment be filed. Daniel W. O'Donoghue, Justice.

Amendment

Filed January 19, 1932

* * * * *

Petitioner, the United States, on the relation of Chestatee Pyrites & Chemical Corporation, amends its original petition filed herein, and for amendment says:

Add to Paragraph XI thereof, the following:

The salaries herein referred to, is an item of executive salaries set up in the report of Honorable John Briar, assistant commisisoner, dated September 22, 1922, and filed herein as Exhibit "D" to the response of the Secretary of the Interior, which salaries, less a subsistence, were denied. The claim for property taken over as the purchase of property, is based upon the finding of said Briar in said report, wherein he gave the cost of the prestimulated plant as \$149,040.38, and out of which allowances were made of \$16,901.07; \$26,427.86 and \$32,453.27; such allowances not being allowed as purchase of property, but as rental, proportion of salvage, and for tools, material, etc., completely used. The remainder of such cost, so found by said assistant commissioner, was disallowed on his statement that "to allow for its purchase would be, in fact, to allow for the purchase of property." The purchase of property otherwise included in this paragraph, refers to what said assistant commissioner calls "real estate, \$750.00"; taxes referred to are called by the said assistant commissioner as "taxes" and amount to \$834.76. Legal services referred to are described in that language by the commissioner and amount to \$585.75.

49 Wherefore, petitioner prays that this amendment be allowed and that he have the relief as in the original petition prayed.

EDGAR WATKINS,
Attorney for Chestatee Pyrites & Chemical Corporation.

50 DISTRICT OF COLUMBIA:

George L. Pratt, being duly sworn, deposes and says that he is vice president and treasurer of Chestatee Pyrites & Chemical Corporation, and as such, is authorized to file the foregoing amendment and make this affidavit; that he has read and knows the allegations in said amendment and that the same are true.

GEO. L. PRATT.

Subscribed and sworn to before me this 6th day of January, 1932.
[NOTARIAL SEAL.]

RALPH B. PRATT,
Notary Public, D. C.

My commission expires February 27, 1936.

WATKINS, ASBILL & WATKINS, Attorneys.

1025 Citizens & Southern Bank Bldg., Atlanta, Ga.

Service of copy of the foregoing amendment received.

O. H. GRAVES,
Attorney for Ray Lyman Wilbur,
as Secretary of the Interior.

51 *Respondent's supplement answer to paragraph 11 of the petition for mandamus of this cause, as amended*

Filed January 27, 1932

* * * * *

11. Answering the allegations of the eleventh paragraph of the petition for mandamus in this cause, as amended, the respondent, Ray Lyman Wilbur, as Secretary of the Interior, says:

The respondent denies, as a matter of fact, that the petitioner, Chestatee Pyrites & Chemical Corporation, sustained any loss whatever through the payment of salaries, or through taking over property in the nature of the purchase of property, or in the payment of taxes, or through the payment of legal expenses. The respondent demands strict proof that such losses, as a matter of fact, were sustained.

The respondent denies as a matter of law that the salaries alleged to have been paid by the petitioner, that the property alleged to have been taken over in the nature of purchase of property by the petitioner, that the taxes alleged to have been paid by the petitioner, and that the legal expenses alleged to have been paid by the petitioner, constituted losses sustained by it within the meaning of the act of March 2, 1919, and its amendments.

The respondent denies that he and his predecessors in office erred as a matter of law in not finding that the payments, as aforesaid, were losses allowable under said act of March 2, 1919.

52 With respect to the report of the Hon. John Briar, a member of the War Minerals Relief Commission, dated September 22, 1922, which is said by the petitioner to have been filed in this cause as Exhibit D to the response of the Secretary of the Interior, the respondent says that the said response of the Secretary of the Interior, together with its exhibits, merely was a response to a rule to show cause which was issued in this case, and that the said response was withdrawn and stricken from the record pursuant to an agreement between the attorney for the petitioner and the

attorney for the respondent, dated September 2, 1929, and that the said response no longer is a part of the record in this cause, it having been stricken from the record pursuant to an order of court in this cause dated September 24, 1929.

A copy of the said stipulation of September 2, 1929, is attached hereto and made a part of this amended answer as Exhibit A.

The respondent says that item 2 of the said stipulation contains an agreement that the papers which had been attached to the Secretary's so-called response, as exhibits, might be considered by the court in connection with the case, "with the same effect as though they were originals thereof," and that this item of the stipulation was confirmed by the order of court of September 24, 1929.

The respondent says that the answer in due form which thereafter was filed with petition for mandamus in this cause, and which is now on file therein, did not include and does not include any exhibits whatever; and that this statement has express reference to the aforesaid report of Commissioner John Briar.

The respondent says that the only intent and effect of the stipulation between counsel, dated September 2, 1929, was to make certain uncertified copies of the findings of the Secretary of the Interior, of the War Minerals Relief Commission, and of the Assistant Commissioner of War Minerals including his report dated
53 September 22, 1922, admissible in evidence in the trial of this cause upon its merits without being authenticated under the seal of the Department of the Interior as otherwise would have been necessary pursuant to section 661, title 28, of the United States Code; and that it was neither contemplated nor understood that such papers thereby became exhibits to the pleadings.

With respect to the item of executive salary "set up in the report of the Hon. John Briar," the respondent says that G. L. Pratt and N. P. Pratt were the sole incorporators and the only stockholders of the Chestatee Corporation, and that they therefore were in a position to distribute to themselves any portion of the corporation's assets which they saw fit, either in the guise of salaries or as dividends. The said G. L. Pratt and N. P. Pratt withdrew \$25,966.67 of the money of the corporation and distributed it to themselves as salaries, and they thereafter included this amount in the claim filed by the corporation pursuant to the act of March 2, 1919, in the guise of a loss suffered by the corporation in producing pyrites in compliance with the request of the authorized agents of the Government. Such distribution of the corporation's assets to themselves by these two stockholders did not, as a matter of fact, necessarily constitute a loss sustained by the corporation in producing or in preparing to produce pyrites pursuant to the provisions of the war minerals act. The withdrawal and appropriation of the corporation's funds by its two stockholders was not the result of contract or agreement with the corporation. Therefore, the Secretary of the Interior, pursuant to the provisions of section 5 of the war minerals act of March 2, 1919, had exclusive and final jurisdiction to determine what amount of the funds withdrawn by the sole incorporators and stockholders of the corporation, and paid to themselves, should be considered, in justice and equity, as a loss sustained by the corporation in producing or in preparing to produce pyrites.

54 The respondent says that the Secretary of the Interior did hear, consider, and determine that question, and that he found as a matter of fact that the Pratts were entitled to receive the sum of \$4,032 in compensation for their services to the corporation, and that they were not in justice and equity entitled to receive any further amount. This was the determination of a matter of fact by the Secretary of the Interior, and by the terms of section 1 of the act of February 13, 1929, pursuant to which this action was brought, and by the terms of section 5 of the war minerals act of March 2, 1919, the Secretary's said decision was and now is conclusive, and it is not subject to review in any court; and in this respect it is immaterial whether the allowance made to the Pratts and treated as a loss to the corporation, was designated as an allowance to them or as a salary charge. The Secretary of the Interior, after hearing and consideration, already has determined as a matter of fact that the allowance which in justice and equity should be made to the Chestatee Corporation as a loss sustained in producing pyrites, on account of the compensation due to its officers for their services, amounted to \$4,032. Therefore, the courts now have no jurisdiction or power to require the Secretary to reconsider that question.

With respect to the item designated as "the claim for property taken over as the purchase of property," the respondent says that the facts with respect to this item are as follows:

The Chestatee Pyrites & Chemical Corporation was incorporated on July 24, 1917, by G. L. Pratt and N. P. Pratt, who thereupon became its sole and only stockholders.

Prior to July 24, 1917, and prior to any stimulation to produce under the war minerals act of March 2, 1919, the Pratts had acquired certain equipment and machinery at a cost of \$132,139.31, and
55 they also had acquired certain tools and miscellaneous items at a cost of \$16,901.07.

Thereafter, and subsequent to stimulation, the Pratts turned over all of this aforesaid property to the Chestatee Corporation in return, as respondent understands and believes, for the stock in that corporation which they had issued to themselves, and in part consideration of a so-called agreement which they, themselves, made on behalf of the corporation, as its incorporators and sole stockholders, whereby the corporation assumed such portion of the indebtedness, which they, themselves, had incurred prior to stimulation through the purchase of the said machinery, equipment, tools, and miscellaneous items as then remained unpaid.

The respondent says that it was impossible for the Pratts, through the method stated, to convert money paid and indebtedness incurred by them prior to stimulation, into payments and indebtedness incurred under stimulation, or to bring such payments and indebtedness, or the property acquired through such payment and indebtedness, within the terms of the war minerals act of March 2, 1919.

In adjusting the claim of the Chestatee Corporation the War Minerals Relief Commission, speaking through Assistant Commissioner Briar in his decision of September 22, 1922, held that the equipment and machinery of the Chestatee Corporation which was purchased by its incorporators before stimulation would be allowed a liberal rental or depreciation credit in favor of the claimant in

adjusting its claim, but that the purchase price of the equipment and machinery so purchased would not be treated as a loss to the claimant for the reason that the equipment and machinery had not been acquired pursuant to any stimulation to produce a war mineral by an authorized agent of the Government. The commissioner said, in substance, that to allow for the purchase price of such property would be in fact to allow for the purchase price of equipment and machinery acquired prior to stimulation.

In adjusting the war minerals claim of the Chestatee Corporation, the War Minerals Relief Commission declared, in Commissioner Briar's said decision, that the Chestatee Corporation was fairly entitled to a "rental or depreciation allowance" of 20 per cent of the value of the machinery and equipment purchased by its incorporators prior to stimulation to produce by an authorized agent of the Government but used by it subsequent to stimulation in the production of a war mineral.

The commission also declared that the entire purchase price of supplies which were used or consumed in the production of a war mineral, subsequent to stimulation, would be allowed for, as such supplies would have no salvage value. This applied to tools and miscellaneous items.

The commission also said that ordinarily there would be no deduction made on account of the salvage value of machinery for which rental was allowed.

From an audit of the claimant's accounts and from an examination of the facts in the case, the War Minerals Relief Commission determined, as a matter of fact, that the Chestatee Corporation owned the equipment and machinery, which also was referred to as "property," which had cost its incorporators \$132,139.31, as aforesaid, and that in adjusting its war minerals claim the corporation was entitled to an allowance of 20 per cent of the cost of such property, or \$26,427.86, as rental for the same subsequent to stimulation.

The War Minerals Relief Commission also found that tools and miscellaneous items, which were owned at the date of stimulation, had cost \$16,901.07, and that such tools and miscellaneous items had either lost all salvage value or had been destroyed through use in the stimulated operations of the Chestatee Corporation, and that therefore this item of the corporation's claim was allowable in full.

The items of \$132,139.31 and \$16,901.07, give the total of \$149,040.38, which is referred to in amended paragraph 11 of the petition, and which is designated therein as "the cost of the pre-stimulated plant."

The relator, in the said amended paragraph 11 of its petition, admitted that \$32,453.27 additional, of the item of \$132,139.31, also had been allowed to it, thus making a total allowance of \$58,481.13 on account of the cost of the petitioner's plant as it existed at the date of stimulation; leaving a balance of \$73,658.18 disallowed, of the items included in the petitioner's war minerals claim which had cost its incorporators a total of \$149,040.38 prior to stimulation.

This balance of \$73,658.18 was disallowed by the War Minerals Relief Commission, and afterwards by the Secretary of the Interior,

because it represented the balance of the cost of the claimant's plant and equipment which the Secretary determined, as a matter of fact, had been purchased by the claimant's incorporators prior to the date of stimulation fixed by the act of March 2, 1919, and which, therefore, was outside of the scope of the said war minerals act.

The statement of Assistant Commissioner Briar, referred to by the relator, that "to allow for its purchase would be in fact to allow for the purchase of property," had reference to "equipment and machinery purchased before stimulation" as is clearly shown by the context.

With respect to the item of \$750 claimed as a loss sustained by the Chestatee Corporation in producing or in preparing to
58 produce pyrites, the respondent says that this item of relator's war mineral claim already has been fully examined, considered, and determined by the Secretary of the Interior.

The respondent says that the testimony, evidence, reports, and exhibits, submitted in connection with the relator's war minerals claim disclosed that the relator had required timber for use in connection with its mining operations, and that instead of purchasing such timber it had purchased a tract of nonmineral timber land at a cost of \$1,590, and thereafter had removed the growing timber from the land.

The relator estimated the value of the timber removed at \$840, and an award of that amount was made to it on account of the same. The relator claimed that the balance of the purchase price of the timber land, amounting to \$750, also should be considered as a loss sustained by it in producing and preparing to produce pyrites, although the land in question was not mineral land, and although the relator continued to retain title to the same.

The Secretary thereupon determined as a matter of fact that the land itself had not been employed in producing or in preparing to produce pyrites, and he determined that the money expended for the fee simple title to the land itself as distinct from the timber thereon, did not constitute a loss sustained within the meaning of the war minerals act.

With respect to the item of \$834.76 designated as taxes, the respondent says that there was nothing in the testimony, evidence, or reports submitted in connection with the relator's war minerals claim to show, as a matter of fact, that these taxes had been assessed and levied by reason of the relator's producing or preparing to
59 produce pyrites pursuant to governmental stimulation, or to show that the taxes were anything more than the usual taxes assessed by the State of Georgia or its political subdivisions upon property within its borders.

The Secretary of the Interior determined, therefore, as a matter of fact that the amount of the taxes in question had not been lost to the relator by reason of producing or preparing to produce pyrites.

The Secretary of the Interior also found, as a matter of law, that taxes assessed by a State, or one of its political subdivisions, against property within its borders was a matter separate and distinct from the production or the preparation to produce a war mineral under the terms of the act of March 2, 1919, and its amendments. The Secretary found that such taxes were due and payable by citizens

of the State irrespective of any request to produce a designated mineral by an agency of the United States, and that such taxes were due and payable irrespective of the nature or outcome of any business venture entered into by the taxpayer.

The Secretary also found that the payment of such taxes did not constitute a loss to a war minerals claimant sustained by it in producing or in preparing to produce a war mineral. He found that the payment of such taxes was the discharge of the duty of citizenship due from the taxpayer to the State, and that it was paid in return for the protection which the taxpayer received from the State, and that the payment therefore was *quid pro quo*.

The Secretary also found that to refund to the relator, from the money of the United States, the amount of the taxes which the relator had paid to the State of Georgia, would be equivalent to the payment of a State tax by the Federal Government, and that there was no authority under any law of the United States for such a payment, and that there was no reason to believe that Congress in enacting the war minerals relief legislation intended that such payments should be made.

60 For all the reasons stated, both of fact and of law, the Secretary of the Interior refused to refund to the relator the amount of the State taxes said to have been paid by it.

With respect to item of \$585.75 designated as the amount paid for legal services, the Secretary of the Interior found as a matter of fact that legal services said to have been rendered to the relator, and for which this payment was said to have been made, in no way involved the production or the preparation to produce a war mineral. The Secretary found as a matter of fact that the payment in question was made as the result of legal services rendered to the relator by attorneys, pursuant to the relation of the attorney and client, and that such services in no way contributed to the production of pyrites or any other war mineral, and that money paid to the attorneys as compensation for their services had not been lost, as a matter of fact, in producing or in preparing to produce pyrites.

The Secretary also found that the services rendered by the attorneys conferred a continuing benefit upon the relator, and that their value was not lost to it in producing or in preparing to produce pyrites.

The respondent says further that all of the items of claim set forth in the said amended paragraph 11, heretofore have been fully and repeatedly examined, considered, and determined by the various Secretaries of the Interior, in the light of testimony taken, of auditors' reports, of reports and recommendations by the War Minerals Relief Commission, and of briefs and arguments by counsel.

The respondent says that on August 8, 1919, after full hearing and consideration, the then Secretary of the Interior, the Hon. Franklin K. Lane, made an award to the relator of \$219,607.90; that after further hearing and consideration Secretary Lane increased the amount of his said award to \$223,529.17; and that after still further

61 hearing and consideration, the Hon. Albert B. Fall, the then Secretary of the Interior, made an additional award to the relator of \$469,784.62, and that the awards so made all were paid to the relator.

The respondent says that in arriving at the amounts awarded and paid to the relator, as aforesaid, all of the items included in amended paragraph 11 of the petition in this case were carefully considered and determined, and that to now require the Secretary of the Interior to again consider such items would be to impose an unreasonable burden upon the Secretary, and a useless expense upon the United States Government.

RAY LYMAN WILBUR,
Secretary of the Interior.

62 DISTRICT OF COLUMBIA, ss:

Ray Lyman Wilbur, being first duly sworn, on his oath says that he has read the foregoing amendment to paragraph 11 of the petition in this cause, by him subscribed, and that he knows the contents thereof, and that the matters therein stated of his own knowledge are true, and those stated upon information and belief he believes to be true.

RAY LYMAN WILBUR.

Subscribed and sworn to before me this 25 day of Jan., 1932.

[NOTARIAL SEAL.]

W. BERTRAND ACHER,
Notary Public in and for the District of Columbia.

E. C. FINNEY,
VICTOR H. WALLACE,
O. H. GRAVES,

Attorneys for Respondent.

63 In the Supreme Court of the District of Columbia

THE UNITED STATES OF AMERICA
Ex rel. Chestatee Pyrites and
Chemical Corporation

v.

RAY LYMAN WILBUR, SECRETARY
of the Interior. Address of
Ray Lyman Wilbur, Interior
Building, 18th and F Streets,
NW., Washington, D. C.

Exhibit A. At Law No. 76364.

Stipulation

It is hereby stipulated and agreed by and between counsel for petitioner and counsel for respondent—

(1) That the response heretofore filed herein be withdrawn and stricken from the record.

(2) That the uncertified copies of the findings of the Secretary of the Interior and the War Minerals Relief Commission and the Assistant Commissioner of War Minerals, attached hereto, may be considered by the court in connection with this case, with the same effect as though they were the originals thereof.

(3) That the respondent be permitted to file and serve an answer in lieu of said response, and the demurrer to the response now on file, be considered a demurrer to such answer.

(4) That this case remain in statu quo upon the docket of this court until further order of the court.

Dated September 2, 1929.

EDGAR WATKINS,
Attorney for Petitioner.
O. H. GRAVES,
Attorney for Respondent.

64

Judgment

Filed February 11, 1932

* * * * *

This cause coming on to be heard upon petition as amended and answer thereto as amended together with exhibits A, B, C, D, and E to said answer, and the demurrer filed herein on March 15, 1929; (taken and considered as a demurrer to the answer as amended) it is, by the court, considered and adjudged that a writ of mandamus do issue out of and under the seal of this court, directed to Ray Lyman Wilbur, as Secretary of the Interior, commanding him to proceed with the final adjustment of the relator's claim filed pursuant to section 5 of the act of Congress of March 2, 1919, chapter 94, as to a balance of \$73,658.18 heretofore disallowed in the adjustment of an item of the claim covering the cost of machinery and equipment of a plant taken over by relator after stimulation, and as to an item of \$750 expended for real estate, and as to an item of \$834.76 paid for taxes, and as to an item of \$585.75 paid for legal services, and as to an item of \$25,966.67 paid as salaries to the relator's executive officers, and finally to adjust those items of the claim as items allowable under the said act of March 2, 1919, in accordance with the amounts due as determined by him.

This February 11, 1932.

No costs are adjudged against either party.

DANIEL W. O'DONOGHUE,
Justice.
FEB. 11, 1932.

Appeal noted in open court by the defendant.

DANIEL W. O'DONOGHUE,
Justice.

65

Assignment of errors

Filed February 20, 1932

* * * * *

Comes now the respondent, Ray Lyman Wilbur, Secretary of the Interior, and assigns the following errors in the action and judgment of the Supreme Court of the District of Columbia in this cause, to wit:

The court erred—

1. In rendering judgment for the relator, the Chestatee Pyrites and Chemical Corporation, and against the respondent, Ray Lyman Wilbur, as Secretary of the Interior.

2. In adjudging, with respect to the item of \$73,658.18 which is involved in this action, that property, rights, and obligations acquired or incurred by the incorporators of the Chestatee Corporation prior to stimulation by any authorized agency of the United States Government, thereafter were brought within the scope of the war minerals act of March 2, 1919, through their transfer to the corporation by its incorporators.

3. In adjudging, with respect to the item of \$750 which is involved in this action, that the portion of the cost of nonmineral timber land, purchased to supply timber for the mining operations of the Chestatee Corporation, which was allocated by the Chestatee Corporation to the land itself, was within the scope of the said war minerals act.

66 4. In adjudging, with respect to the item of \$834.76 which is involved in this action, that the amount of taxes paid by the Chestatee Corporation represents a loss sustained in producing or in preparing to produce a war mineral, and that it, therefore, is compensable under the war minerals act.

5. In adjudging, with respect to the item of \$585.75 which is involved in this action, that money paid by Chestatee Corporation for legal services constitutes a compensable loss to the corporation within the meaning and scope of the war minerals act.

6. In adjudging, with respect to the item of \$25,966.67 which is involved in this action, that the money of the Chestatee Corporation which was appropriated by its incorporators and paid to themselves as salaries, represented a compensable loss to the corporation within the meaning and scope of the war minerals act, and that it must be treated and considered as such by the respondent in the adjustment of the corporation's war minerals claim.

7. In not adjudging, with respect to the said item of \$25,966.67, that the amount of compensation to the officers of the Chestatee Corporation for their services, which should be considered and allowed as a compensable loss to the corporation under the war minerals act, involved a question of fact for the sole determination of the Secretary of the Interior, and that his determination of the amount so to be allowed, and of the ground for its allowance, whether as salaries or as compensation for services, was final and conclusive and not subject to review by the court.

8. In adjudging, that any of the aforesaid items represents a loss which is compensable under the war minerals act of March 2, 1919, and in adjudging that the respondent shall finally adjust any of such items as a loss sustained in producing or in preparing to produce pyrites, within the meaning of that act.

O. H. GRAVES,

VICTOR H. WALLACE,

Attorneys for the Respondent, Ray Lyman Wilbur.

67

Designation of the record

Filed February 20, 1932

* * * * *

Comes now the respondent, Ray Lyman Wilbur, by his counsel of record, and designates the parts of the record which he desires to

have included in the transcript, said parts being considered sufficient for the determination of the questions raised on appeal, namely:

1. The petition for mandamus.
2. Memorandum. Ray Lyman Wilbur, as Secretary of the Interior, substituted as respondent in the place and stead of Roy O. West.
3. The answer to the petition.
4. The relator's demurrer to the respondent's answer.
5. Relator's amendment to its original petition.
6. Respondent's supplemental answer to the amended petition.
7. Exhibits A, B, C, D, and E.
8. Judgment of the court, with notation of appeal.
9. Assignment of errors.
10. This designation of the record.

O. H. GRAVES,
Attorney for the Respondent.

Copy of the foregoing designation of the record was mailed this 19 day of February, 1932, to Edgar Watkins, Esq., attorney for the relator, at his address of record, Atlanta Trust Building, Atlanta, Georgia.

O. H. GRAVES,
Attorney for the Respondent.

68 *Additional designation of record*

Filed February 27, 1932

* * * * *

To the clerk of said court:

Chestatee Pyrites & Chemical Corporation, relator, requests that the following portions of the record in the above-entitled cause be incorporated into the transcript of record on appeal to the Court of Appeals of the District of Columbia, in addition to those portions of the record designated in the præcipe heretofore filed herein by the appellant, Ray Lyman Wilbur:

I

Following paragraph 2 of appellant's designation of the record, add:

The response filed by said Ray Lyman Wilbur, the stipulation that such response should be withdrawn and stricken from the record and the order of the court entered September 24, 1929, approving such stipulation.

II

Add, to Number 7 of appellant's designation of the record, the following:

Stipulation of the parties hereto agreeing to use Exhibits A, B, C, D, and E, such stipulation being attached to said exhibits.

III

This designation of original parts of record.

EDGAR WATKINS,
Attorney for Chestatee Pyrites & Chemical Corporation.

69 Service is accepted of the above and foregoing designation of additional parts of record and a receipt of a copy thereof is acknowledged.

This 24 day of February, 1932.

O. H. GRAVES,
Attorney for Ray Lyman Wilbur.

70 Supreme Court of the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 69, both inclusive, to be a true and correct transcript of the record, according to directions of counsel, herein filed, copies of which are made part of this transcript, in cause No. 76364 at law, wherein the United States of America, ex rel. Chestatee Pyrites & Chemical Corporation is plaintiff and Roy O. West, Secretary of the Interior, is defendant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 14th day of March, 1932.

[SEAL.]

FRANK E. CUNNINGHAM, *Clerk.*

[Indorsement on cover:] District of Columbia Supreme Court. No. 5639. Ray Lyman Wilbur, Secretary of the Interior, appellant, vs. the United States of America, ex rel. Chestatee Pyrites & Chemical Corporation. Court of Appeals, District of Columbia. Filed Mar. 24, 1932. Henry W. Hodges, clerk.

DIS- FILED

APR 1 3 1932

Henry W. Hodges

CLERK

No. 5639

In the Court of Appeals of the District of
Columbia

JANUARY TERM, 1932

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR,
APPELLANT

v.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE
PYRITES & CHEMICAL CORPORATION

BRIEF OF APPELLANT

E. C. FINNEY,
Solicitor, Interior Department.
O. H. GRAVES,
Assistant to the Solicitor.
VICTOR H. WALLACE,
Attorney.

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In the Court of Appeals of the District of Columbia

JANUARY TERM, 1932

No. 5639

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, appellant

v.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE
Pyrites & Chemical Corporation

BRIEF OF APPELLANT

STATEMENT OF THE CASE

This is an appeal by Ray Lyman Wilbur, as Secretary of the Interior, from a judgment of the Supreme Court of the District of Columbia entered on February 11, 1932 (R. 30), granting a writ of mandamus in the case of *United States ex rel. Chestatee Pyrites & Chemical Corporation v. Ray Lyman Wilbur, Secretary of the Interior*, Law No. 76364. The judgment appealed from was rendered against the respondent pursuant to the relator's demurrer to the respondent's answer and

amended answer to the relator's petition and amended petition. (R. 5, 30.)

The action originally was instituted against Roy O. West, the then Secretary of the Interior, and it was revived against the appellant, Ray Lyman Wilbur, when he succeeded to the office of Secretary of the Interior after the resignation of Secretary West. (R. 4.)

The relator's cause of action grew out of Section 5 of the act of March 2, 1919 (40 Stat. 1272, 1274), commonly known as the War Minerals section of that act. The action itself was instituted pursuant to the act of January 13, 1929 (45 Stat. 1166), which conferred jurisdiction upon the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which had arisen in the adjustment, liquidation, and payment of a claim filed under Section 5 of the said act of March 2, 1919.

The judgment appealed from directed that a writ of mandamus issue against the respondent, as Secretary of the Interior, commanding him to finally adjust certain items of the relator's War Minerals claim, as items allowable under the act of March 2, 1919, in accordance with the amounts due as determined by him. (R. 30.)

The facts necessary to a proper understanding of this appeal are as follows:

On March 5, 1919, "N. P. Pratt, George L. Pratt, and the Chestatee Pyrites & Chemical Corporation," hereinafter called the Chestatee Corpora-

tion, filed jointly War Minerals Claim No. 1 with the War Minerals Relief Commission, wherein they claimed an award for certain losses said to have been sustained by them in producing and in preparing to produce pyrites, pursuant to a request or demand of one of the agencies of the United States Government named in Section 5 of the act of March 2, 1919, *supra*. In filing the claim the Pratts placed their names, as claimants, before that of their corporation. In the original joint awards, however, this order is reversed. (R. 11, 12.)

The Chestatee Corporation was organized under the laws of the State of Georgia, on July 24, 1917, by two incorporators only, the said N. P. Pratt and George L. Pratt, who were the sole owners of all of its capital stock. The corporation was so identified with its two incorporators that War Minerals Claim No. 1, as already stated, was filed in the names of "N. P. Pratt, George L. Pratt, and the Chestatee Pyrites & Chemical Corporation," the Chestatee Corporation apparently being treated as the trade name under which the Pratts carried on their business.

Two awards, totaling \$693,313.79, were made under War Minerals Claim No. 1 to the Pratts and the corporation, by the Secretary of the Interior, and the vouchers, which were duly paid, were drawn in the names of "Chestatee Pyrites & Chemical Corporation, N. P. Pratt and George L. Pratt."

These payments did not include all of the items for which the claimants sought an award. At the time of the awards, however, the Secretary's action in adjusting the claim was conclusive and not subject to review. *Work v. United States ex rel. Chestatee Pyrites & Chemical Corporation* (267 U. S. 185).

Thereafter the act of February 13, 1929, *supra*, was passed, which permitted a dissatisfied claimant to bring suit in the Supreme Court of the District of Columbia "to review the final decision of the Secretary of the Interior upon any question of law," which had arisen in the adjustment, liquidation, and payment of his claim under the War Minerals act.

On February 18, 1929, the aforesaid claimants filed action at law No. 76361, in the Supreme Court of the District of Columbia in the name of the Chestatee Corporation only, wherein the corporation prayed a writ of mandamus to require the Secretary of the Interior to take jurisdiction of War Minerals Claim No. 1 with respect to items of interest paid, or contracted to be paid, by it upon money borrowed and used in its War Minerals operations, and to adjust and pay such items. This will appear from the records of this court in appeal case No. 5194.

On the same day the claimants also filed a separate action at law No. 76364 in the same court, in the name of the Chestatee Corporation, wherein the corporation prayed another writ of mandamus

requiring the Secretary of the Interior to adjust and pay certain other items of the same War Minerals claim. (R. 1.)

Action at law No. 76361 was heard and decided adversely to the Chestatee Corporation by the Supreme Court of the District of Columbia; the judgment of that court was reversed by this court (see 47 Fed. (2d) 424); and the judgment of this court in turn was affirmed by the Supreme Court of the United States on December 7, 1931 (see 284 U. S. 231). Since that date an additional award of \$44,451.45 has been made to the Chestatee Corporation in compliance with the Supreme Court's decision in case No. 76361, thus making a total of \$737,765.24, which has been awarded by the Secretary of the Interior in the adjustment of War Minerals Claim No. 1.

The original awards appear at R. 11, 12, and 22; the additional award of \$44,451.45 does not appear in this record.

Subsequent to the decision and judgment of the Supreme Court of the United States in case No. 76361, the Chestatee Corporation amplified its petition in the remaining case No. 76364, by amending paragraph 11. (R. 22.) The respondent, the Secretary of the Interior, thereupon filed a supplemental answer to said paragraph 11 of the relator's petition as amended. (R. 23.)

The case was then heard by the trial court as upon a demurrer (R. 30), which had been filed in the case on March 15, 1929, by the Chestatee Cor-

poration (R. 5). The case was argued upon the record, and the trial justice was advised by counsel for the respondent that no question was then being raised as to the prior suit No. 76361.

On February 11, 1932, the trial court rendered a judgment in favor of the Chestatee Corporation, granting a writ of mandamus, as prayed in its original petition. (R. 30.)

From this judgment an appeal was noted in open court by the respondent, the Secretary of the Interior, and the case now is before this court pursuant to his appeal. (R. 30.)

There are certain contradictions in the record which should be explained to the court before proceeding with the argument.

The appellant's original answer (R. 6), filed September 24, 1929, apparently has five exhibits, A, B, C, D, and E, attached to it (R. 11 to 22), although the answer itself makes no reference to any exhibits.

In the appellant's supplemental answer, filed January 27, 1932 (R. 23, 24), it is said that the original answer "did not include, and does not include any exhibits whatever." The supplemental answer has a stipulation dated September 2, 1929, attached to it as exhibit "A" (R. 24, 29), showing that the appellant's response to the rule to show cause (R. 4), in which the appellant made reference to exhibits A, B, C, D, and E, was withdrawn

and stricken from the record by stipulation of counsel. This stipulation was confirmed by an order of court dated September 24, 1929. (R. 6.)

The judgment of the court, however, which is dated February 11, 1932, designates these exhibits A, B, C, D, and E as exhibits to the appellant's answer, and the trial justice considered them as such in rendering his judgment. (R. 30.)

This court, no doubt, will wish to know how the papers A, B, C, D, and E now appear as exhibits to the original answer, and by what authority the trial court considered them on demurrer. This is explained by saying that subsequent to the filing date of the appellant's supplemental answer, it was agreed with the court that these papers should be considered as exhibits to the appellant's original answer.

ASSIGNMENT OF ERRORS

The lower court erred—

1. In rendering judgment for the relator, the Chestatee Pyrites and Chemical Corporation, and against the respondent, Ray Lyman Wilbur, as Secretary of the Interior.

2. In adjudging, with respect to the item of \$73,658.18 which is involved in this action, that property, rights, and obligations acquired or incurred by the incorporators of the Chestatee Corporation prior to stimulation by any authorized agency of the United States Government, thereafter were brought within the scope of the War

Minerals Act of March 2, 1919, through their transfer to the corporation by its incorporators.

3. In adjudging, with respect to the item of \$750 which is involved in this action, that the portion of the cost of nonmineral timberland, purchased to supply timber for the mining operations of the Chestatee Corporation, which was allocated by the Chestatee Corporation to the land itself, was within the scope of the said War Minerals Act.

4. In adjudging, with respect to the item of \$834.76 which is involved in this action, that the amount of taxes paid by the Chestatee Corporation represents a loss sustained in producing or in preparing to produce a war mineral, and that it, therefore, is compensable under the War Minerals Act.

5. In adjudging, with respect to the item of \$585.75 which is involved in this action, that money paid by the Chestatee Corporation for legal services constitutes a compensable loss to the corporation within the meaning and scope of the War Minerals Act.

6. In adjudging, with respect to the item of \$25,966.67 which is involved in this action, that the money of the Chestatee Corporation which was appropriated by its incorporators and paid to themselves as salaries, represented a compensable loss to the corporation within the meaning and scope of the War Minerals Act, and that it must be treated and considered as such by the respondent in the adjustment of the corporation's War Minerals claim.

7. In not adjudging, with respect to the said item of \$25,966.67, that the amount of compensation to the officers of the Chestatee Corporation for their services, which should be considered and allowed as a compensable loss to the corporation under the War Minerals Act, involved a question of fact for the sole determination of the Secretary of the Interior, and that his determination of the amount so to be allowed, and of the ground for its allowance, whether as salaries or as compensation for services, was final and conclusive, and not subject to review by the court.

8. In adjudging that any of the aforesaid items represents a loss which is compensable under the War Minerals Act of March 2, 1919, and in adjudging that the respondent shall finally adjust any of such items as a loss sustained in producing or in preparing to produce pyrites, within the meaning of that act. (R. 30.)

ARGUMENT

I

Did the Supreme Court of the District of Columbia have jurisdiction to render judgment in action at law No. 76364?

The act of February 13, 1929, *supra*, conferred jurisdiction upon the Supreme Court of the District of Columbia to hear and determine the "petition" of any claimant under the War Minerals act, brought "to review the final decision of the Secretary of the Interior upon any question of law which

has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said acts."

Sections 2 and 4 of the act read as follows:

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 4. Upon the final disposition of such proceeding the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

It will be noted that section 2 refers to "any proceeding," and to "the petition," and to "the cause," in the singular; and that section 4 also refers to "such proceeding," and to "the final judgment or decree," and to "such judgment or decree," in the singular.

The proceeding provided for by Congress in the act of February 13, 1929, was one of its own creation, and it was anomalous in character. While there is no precedent under the act, it is needless to say that its construction by the courts should be

in accordance with the purpose which Congress intended it to serve. When so construed, it does not seem probable that Congress intended to confer more than one right of action under the act, upon any one War Minerals claimant, with respect to any one War Minerals claim; as one action easily could be made to serve all of the purposes of the act, while a multiplicity of suits would involve needless cost to the litigants, and needless labor of the courts.

In this instance the Chestatee Corporation already has fully exercised its statutory right to review the Secretary's final decision of War Minerals Claim No. 1, through filing cause No. 76361. That cause already has been fully heard and finally determined.

It no doubt is true, if the Secretary of the Interior wished to object to the propriety of the second action brought by the Chestatee Corporation, Law No. 76364, that he should have pleaded his objection in abatement, and that having failed to do so, and having answered fully on the merits, he can not now urge the first action in abatement of the second action, in this court; nor is he attempting to do so.

All of that, however, has nothing to do with the jurisdiction of the Supreme Court of the District of Columbia in this case, which could not be conferred by any action or inaction on the part of the Secretary of the Interior. If the act of February 13, 1929, conferred no jurisdiction upon the Su-

preme Court of the District of Columbia to hear and determine two separate proceedings by one claimant, involving questions arising in one War Minerals claim, the lower court's judgment in this case is void, and this court can of its own motion raise the question of jurisdiction and dismiss this second case.

It is for this court to say whether the Secretary of the Interior should be proceeded against under the act of February 13, 1929, by separate actions of mandamus, brought by the same relator, to compel his performance of a single official duty.

II

The trial court erred in adjudging, with respect to the item of \$73,658.18 which is involved in this action, that property, rights, and obligations acquired or incurred by the incorporators of the Chestatee Corporation prior to stimulation by any authorized agency of the United States Government, thereafter were brought within the scope of the war minerals act of March 2, 1919, through their transfer to the corporation by its incorporators. Assignment of Error No. 2

The points discussed in this brief follow the assignments of error (R. 30), and these in turn follow, in their order, the various items of the appellee's War Minerals claim which the court, in the judgment appealed from, required the appellant to finally adjust as items allowable under the act of March 2, 1919. (R. 30.)

In considering the various items of the judgment, it must be remembered that the judgment

was rendered pursuant to the appellee's demurrer (R. 5, 30), which searched the record *and which admitted all the facts stated in the appellant's answer and supplemental answer*, if well pleaded.

The facts stated in the appellant's answer with respect "to a balance of \$73,658.18 heretofore disallowed in the adjustment of an item of the claim, covering the cost of machinery and equipment of a plant taken over by relator after stimulation" (See judgment; R. 30), were, in substance, as follows:

The Chestatee Corporation was incorporated on July 24, 1917, by G. L. Pratt and N. P. Pratt, who became its sole and only stockholders. (R. 25.) Prior to any stimulation to produce under the War Minerals act, the Pratts had acquired certain equipment and machinery at a cost of \$132,139.31, and had acquired certain tools and miscellaneous items at a cost of \$16,901.07. (R. 20, 25.)

Subsequent to stimulation the Pratts turned over all of this aforesaid property to the Chestatee Corporation in return for the stock of that corporation, which they issued to themselves, and in part consideration of a so-called agreement which they themselves made on behalf of the corporation, whereby the corporation assumed such portion of the indebtedness for the purchase of said machinery, equipment, tools and miscellaneous items as then remained unpaid. (R. 25.)

In adjusting War Minerals claim No. 1, which had been filed by "N. P. Pratt, George L. Pratt, and the Chestatee Pyrites and Chemical Corpora-

tion" (R. 11, 12), the Secretary of the Interior allowed and paid the item of \$16,901.07 in full, because it represented the cost of tools and miscellaneous items whose value had been entirely lost through their use in the claimants' mining operations. (R. 20, 26.) The Secretary also allowed and paid \$58,481.13 of the other item of \$132,139.31, but disallowed the balance of that item, amounting to \$73,658.18 (R. 26), which is included in the court's judgment in this case (R. 30).

This balance was disallowed by the Secretary of the Interior "because it represented the balance of the cost of the claimant's plant and equipment, which the Secretary determined, as a matter of fact, had been purchased by the claimant's incorporators prior to the date of stimulation fixed by the act of March 2, 1919, and, therefore, was outside of the scope of the War Minerals act." (R. 27.)

Upon the basis of these facts, which are admitted by the appellee's demurrer, and which are made "conclusive and not subject to review by any court," by the act of February 13, 1929, pursuant to which the appellee's petition for mandamus was filed, the Secretary of the Interior contends that he can not be lawfully required to adjust this balance of \$73,658.18 as an item allowable under the act of March 2, 1919.

It is admitted by the demurrer, and was found as a matter of fact by the Secretary, that the Pratts acquired the machinery and equipment represented by the cost item of \$132,139.31 prior to the govern-

mental stimulation required by the War Minerals act of March 2, 1919. (R. 20, 27.) It is admitted that the Pratts were the only incorporators and sole stockholders of the Chestatee Corporation. (R. 24, 25.) It is admitted that the property now in question was turned over to the corporation by the Pratts in consideration of an agreement which the Pratts, as the only stockholders and officers of the corporation, made with themselves as the owners of the property. (R. 25.)

Under such conditions the Chestatee Corporation could take only what the Pratts had to give, which was rights under contracts of purchase entered into by the Pratts prior to stimulation, and which, therefore, were excluded from the benefits of the War Minerals act. As the Pratts could claim no benefits under the War Minerals act with respect to the item of \$132,139.31, their *alter ego*, the Chestatee Corporation, could claim none as their voluntary transferee.

This, however, is not a case in which the Secretary of the Interior refused to consider an item of a War Minerals claim because he believed it to be without the scope of the War Minerals act, as was the case of interest payments made by War Minerals claimants.

On the other hand, this item of \$132,139.31 was given most careful consideration in the adjustment of the appellee's War Minerals claim, and a large portion of it was repaid indirectly as rent.

Commissioner Briar, of the War Minerals Relief Commission, stated that the machinery and equipment which had been purchased by the Pratts before stimulation at a cost of \$132,139.31, and which had been used during stimulation, would be given a liberal rental or depreciation credit, but that its purchase price would not be allowed. (R. 19.)

Commissioner Briar accordingly recommended that an allowance by way of rental for the machinery and equipment, equal to 20 per cent of its cost, or \$26,427.86, should be made (R. 20), and such an allowance was made by the Secretary of the Interior and included in his award of \$469,784.62 under date of September 28, 1922 (R. 21).

Prior to that date, and apparently in the original adjustment of the claim by Secretary Lane, which is not shown by the record in this case, another allowance of \$32,453.27 also had been made on account of this item of \$132,139.31 (R. 22, 26), thus making a total allowance of \$58,481.13 paid on its account, leaving a balance of \$73,658.18 disallowed (R. 26).

The amount to be allowed, and the amount to be disallowed on account of this item of \$132,139.31, involved a question of fact. That fact already has been fully considered and finally determined by the Secretary of the Interior, who already has awarded and paid the amount due as determined by him, to wit, \$58,481.13, as aforesaid. (R. 26.)

The court's judgment in this case, requiring a further adjustment of this item, was based upon no "question of law," and it, therefore, was without the scope of the act of February 13, 1929, and was error.

III

The trial court erred in adjudging, with respect to the item of \$750 which is involved in this action, that the portion of the cost of nonmineral timberland, purchased to supply timber for the mining operations of the Chestatee Corporation, which was allocated by the Chestatee Corporation to the land itself, was within the scope of the said war minerals act. Assignment of Error No. 3

The Chestatee Corporation required timber for use in its mining operations. Instead of purchasing the timber it needed it purchased a tract of nonmineral timberland at a cost of \$1,590, cut the timber from it, and retained title to the land. The timber was used in the corporation's mining operations, but the land was not used. (R. 10, 27.)

The Chestatee Corporation fixed the value of the timber removed and used by it, as aforesaid, at \$840, and an award of that amount was allowed and paid by the Secretary of the Interior. (R. 10, 27.)

The Chestatee Corporation, however, was not satisfied with this award, but contended that a further allowance should have been made on account of the purchase price of the land itself, which, in

accordance with the allocation made by the Chestatee Corporation, amounted to \$750. (R. 10, 22.)

The lower court adjudged, as a matter of law, that this was an item of the appellee's claim which should be adjusted by the Secretary of the Interior as one allowable under the act of March 2, 1919, in accordance with the amount due as determined by him. (R. 30.)

The appellant contends that the purchase of this nonmineral land had nothing whatever to do with the appellee's mining operation. It was the timber, and not the land upon which the timber grew, which was employed in producing and in preparing to produce pyrites, and it was the value of the timber alone which was lost to the appellee as the result of its production of a war mineral.

This case is entirely different from the case of the Vindicator Consolidated Gold Mining Company, decided by this court in 47 F. (2d) 422, and which was affirmed by the Supreme Court of the United States in 284 U. S. 231. In that instance the claimant, pursuant to direct stimulation by an agent of the Government, bought land containing ore of the mineral it was requested to produce. Needless to say, the claimant in that case could not produce the mineral in question unless it owned or controlled land which contained it.

In the instant case the claimant easily could have obtained mining timber without buying the non-mineral land upon which it grew.

IV

The trial court erred in adjudging with respect to the item of \$834.76 which is involved in this action, that the amount of taxes paid by the Chestatee Corporation represents a loss sustained in producing or in preparing to produce a war mineral, and that it, therefore, is compensable under the war minerals act. Assignment of Error No. 4

One of the items of loss alleged by the Chestatee Corporation, for which an award was denied by the Secretary of the Interior, was an item of \$834.76, representing money said to have been paid for State taxes. (R. 9, 22, 27.)

The trial justice, in the judgment appealed from, required the Secretary of the Interior to adjust this item of the appellee's claim as an item allowable under the War Minerals act of March 2, 1919. (R. 30.)

The appellant contends that this was error for the following reasons:

Section 5 of the War Minerals act of March 2, 1919, authorized the Secretary of the Interior to pay only net "losses" suffered by a War Minerals claimant by reason of producing or preparing to produce either manganese, chrome, pyrites, or tungsten under the conditions provided in the act.

Ballentine's Law Dictionary defines "loss" as a synonym of damage. This definition also is found in the reported decisions of various courts. In one case it was said that loss, damage, and injury import the same thing.

Taxes, however, do not import a loss to the taxpayer, as taxes are paid in return for the equivalent benefits of government. Nor are taxes in any way akin to "damage or injury."

The decisions of the Supreme Court of the United States, cited below, disclose what the true nature of a tax is.

In the case of *Lane County v. Oregon* (74 U. S. (7 Wall.) 71, 80) the Supreme Court said that a tax, in its essential characteristics, is not a debt nor in the nature of a debt. A tax is an impost levied by an authority of government upon its citizens or subjects for the support of the State. It is not founded on contract or agreement. It operates *in invitum*. See also *Meriwether v. Garrett* (102 U. S. 472, 513).

The court said in *United States v. Railroad Company* (84 U. S. 322, 326) that a tax is understood to be a charge, a pecuniary burden for the support of government.

The court said in *Loan Association v. Topeka* (87 U. S. 655, 664) that taxes are burdens or charges imposed by the legislature upon persons or property to raise money for public purposes. Taxes are a public imposition levied by authority of the Government for the purpose of carrying on the Government in all its machinery and operations and are imposed for public purposes.

The court said in *Illinois Central Railroad Company v. Decatur* (147 U. S. 190; 197-198) that taxes are the exactions placed upon a citizen for the sup-

port of the Government and paid to a State as a State, the consideration of which is protection by the State. In return for the tax the State secures to the citizen that general benefit which results from protection to his person and property, and the promotion of those various schemes which have for their object the welfare of all.

Should further authority be wanted as to the nature of a tax, many cases in point will be found in the three editions of "Words and Phrases Judicially Defined." But in none of those volumes, nor anywhere else, has a case been discovered which holds that the payment of a tax constituted a loss to the taxpayer. The Government protects the taxpayer; the taxpayer finances the Government; and the result is *quid pro quo*.

The second paragraph of Section 5 of the War Minerals act contains the proviso "that no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April 6, 1917, and prior to November 12, 1918, in a legitimate attempt to produce" certain designated minerals.

The investments of money and the monetary obligations referred to in this proviso clearly are those growing out of a claimant's own acts. Taxes, however, as stated by the Supreme Court of the United States, *supra*, operate *in invitum*. Furthermore, the limitation of time, April 6, 1917, to

November 12, 1918, clearly would be inapt when applied to taxes.

Compensable losses under the War Minerals act mean "such net losses as have been suffered" by reason of producing or preparing to produce a war mineral in compliance with the request or demand of a specified governmental agency. State taxes, however, have no relation to a request or demand by any governmental agency, or to production or lack of production of any mineral.

Furthermore, for the United States to have refunded the State taxes paid by the appellee would have been equivalent to the payment of the taxes by the United States in the first instance. This would have been nothing more or less, in effect, than a remission of a State tax at the expense of the Federal Government. The United States did not exempt War Minerals claimants from the payment of any of its own taxes, or authorize their refund to such a taxpayer, and there is no good reason to believe that Congress intended to assume the burden of paying State taxes for them.

For Congress to pay a State tax, by way of gratuity to the taxpayer against whom the tax had been assessed, would be of such doubtful constitutionality that an intention to do so should not be left to conjecture but should be clearly expressed by Congress itself. There is no such expression of intention in the War Minerals acts.

The trial court erred in adjudging with respect to the item of \$585.75 which is involved in this action that money paid by the Chestatee Corporation for legal services constitutes a compensable loss to the corporation within the meaning and scope of the war minerals act. Assignment of Error No. 5

In the judgment appealed from the trial court commanded the Secretary of the Interior to adjust an item of the appellee's War Minerals claim covering \$585.75 paid for legal services, as an item allowable under the War Minerals act, in accordance with the amount due as determined by him. (R. 30.)

The appellant contends that payments made for legal services were a personal expenditure of the War Minerals claimant for whose benefit the services were rendered, and that they do not represent losses sustained in producing or in preparing to produce a war mineral in compliance with Government stimulation.

This construction of the statute has been uniformly applied and followed by the various Secretaries of the Interior in their interpretation and administration of the War Minerals act. Prior to the act of February 13, 1929, this construction of the act by the Secretary of the Interior was conclusive. By the act in question the courts of this District were given jurisdiction "to review the final decision of the Secretary of the Interior upon any question of law" arising in the adjustment of

a War Minerals claim. This, needless to say, has brought the question of attorney's fees paid by claimants within the jurisdiction of the courts.

It will be noted that the 1929 act does not confer a power of original construction upon the courts, but only invests them with jurisdiction to "review" the construction already placed on the War Minerals act by the Secretary of the Interior in his adjustment of any War Minerals claim.

This "review" apparently is to be governed by the same principles of law that heretofore always have governed the courts of this District when they have been called upon to review a decision by the Secretary of the Interior, rendered in the course of his official duties.

There is no reason to believe that Congress, in enacting the 1929 act, intended to abolish or modify the rule which always has been recognized and applied in the past by the courts of this District and by the Supreme Court of the United States in such cases. The rule was stated by this court in *Balinger v. United States ex rel. Ness* (33 App. D. C. 302, 308), as follows:

The construction of a statute by the department charged with its administration, early made and uniformly followed for a number of years, is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons.

This rule has been stated in varying ways by this court in a number of cases which need no citation.

A recent case in point is *Wilbur v. Texas Co.* (59 App. D. C. 275, 277) where quotations are made from the decisions of the Supreme Court of the United States in the cases of *United States v. Philbrick* (120 U. S. 52, 59), and *Edwards's Lessee v. Darby* (12 Wheat. 206, 210).

With respect to the question now under consideration, the Secretary of the Interior held from the passage of the War Minerals act of March 2, 1919, to the passage of the act of February 13, 1929, that attorney's fees paid by a War Minerals claimant did not represent losses suffered in producing or in preparing to produce a war mineral in compliance with a request or demand of an agency specified in the War Minerals act.

The Secretary held that an attorney's right to receive compensation for his legal services grew out of the independent relation of attorney and client, and that such right involved a debt, in the ordinary sense of the word, due by the client to his attorney, and not a loss incurred through mining. (R. 10, 28.)

The Secretary also held that as the services rendered by the attorney in no way contributed to the production of a war mineral, they properly could not be considered as losses sustained by reason of producing or in preparing to produce such a mineral. (R. 10, 28.)

The Secretary held that money paid by the client to his attorney for legal services was not money

lost by the client. The value of the services rendered by the attorney to the client was full consideration for the money paid to the attorney for the services, and there was no loss on either side. The services of the attorney, whether for examining titles, for preparing applications for incorporation, for obtaining charters of incorporation, for collecting debts, for defending suits, or for other purposes, conferred a continuing benefit upon the client, which was in no way affected by any mining loss which the client might suffer.

For all of these reasons, and perhaps for others also, all the Secretaries of the Interior who administered the War Minerals act, refused to include money paid, or due to be paid, by War Minerals claimants for attorney's fees, in awards made under that act.

The Secretaries' ruling in that respect was neither arbitrary nor capricious, and it found support in the language of the War Minerals act itself, which limited compensable losses to those sustained in producing or in preparing to produce a war mineral. The ruling rests upon not only a possible, but upon a rational and obvious, construction of the statute.

The appellees contend that under such conditions the trial court erred in awarding mandamus to compel him to adjust the item for legal services, which is involved in this case, as an item allowable under the War Minerals act.

VI

The trial court erred in not adjudging, with respect to the item of \$25,966.67 which is involved in this action, that the amount of compensation to the officers of the Chestatee Corporation for their services, which should be considered and allowed as a compensable loss to the corporation under the war minerals act, involved a question of fact for the sole determination of the Secretary of the Interior; and that his determination of the amount so to be allowed, and of the ground for its allowance, whether as salaries or as compensation for services, was final and conclusive and not subject to review by the court. Assignments of Error Nos. 6 and 7

The last item of the judgment appealed from refers to the sum of \$25,966.67, representing money which G. L. Pratt and N. P. Pratt paid to themselves as salaries from the funds of the Chestatee Corporation (R. 9, 24), and which the court required the appellant to adjust as an item allowable under the act of March 2, 1919, in accordance with the amount due as determined by him (R. 30).

In considering this item of the judgment it is necessary to keep clearly in mind the fact that the Chestatee Corporation was nothing more than the *alter ego* of the Pratt Brothers.

They were its sole incorporators and stockholders, and all of the corporation's paid-in capital was received from them, and the corporation was so identified with its incorporators that the War Minerals claim which now is under consideration was filed in the names of the Pratts and the corporation jointly, and the vouchers drawn in pay-

ment of allowances made under the claim by former Secretaries of the Interior were drawn in the names of the Pratts and the corporation jointly.

From the beginning of the administration of the War Minerals act the War Minerals Relief Commission and the Secretary of the Interior held that the owners of a mining venture could not pay themselves such compensation as they saw fit from the funds of the venture, as salaries or as compensation for their services, and then demand as of right that the amounts so paid be considered and adjusted as a compensable loss sustained by the venture.

The act expressly gave the Secretary of the Interior power to "make such adjustments and payments in each case as he shall determine to be just and equitable." Under this provision of the act the Secretary has claimed and exercised the right to say what amount of compensation paid to themselves by the owners of a venture, for their own services, should be treated as a loss sustained by the venture in producing or in preparing to produce a war mineral.

In the recent decision of the Supreme Court of the United States in the case of *Wilbur, Secretary of the Interior, v. United States ex rel. Vindicator Consolidated Gold Mining Company*, and *Wilbur, Secretary of the Interior, v. United States ex rel. Chestatee Pyrites and Chemical Corporation* (284 U. S. 231), the Supreme Court treated the provision of Section 5 of the War Minerals act quoted above

as a limitation upon the authority of the Secretary in making awards. The court said:

And the section *limits the authority of the Secretary* to such "adjustments and payments in each case as he shall determine to be just and equitable." (Italics supplied.)

In other words, if, in any given case, a War Minerals claimant paid himself more for his services to a venture than the Secretary determined to be just and equitable, the amount which the Secretary was authorized by law to award and pay as a loss sustained on that account under the War Minerals act was limited to the amount which he, the Secretary, "determined to be just and equitable." The discretion exercised by the Secretary in reaching his determination is not subject to review, if fairly exercised, as the 1929 act provides that "the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court." The amount which in justice and equity was to be allowed on account of the services of the Pratts was a question of fact.

In administering the War Minerals act the various Secretaries of the Interior adopted and followed the rule that the compensable value of the services of an officer of a corporation, who was one of its controlling stockholders, should be computed at \$4 a day, and that that amount should be credited to the corporation as money expended by it in producing or in preparing to produce a war mineral,

in determining whether the corporation had sustained a net loss through such production.

This same rule was applied in the case of individual operators and partnerships. In such cases the individual operator, and each of the partners, was allowed \$4 per day for his own services incident to production, and that amount was considered as an expense of production, or of preparation to produce, to be allowed for in determining the amount of the net loss, if any, which resulted from his or their mining operations.

In the instant case, had the Pratts continued their War Minerals operations as individual venturers, instead of incorporating themselves as the Chestatee Corporation, there would have been no doubt that the authority of the Secretary of the Interior to make an award to them for the value of their services incident to the venture would have been limited to such adjustment as the Secretary determined to be just and equitable. The value that the Pratts themselves might have set upon their services would not have been controlling upon the Secretary in determining the justice and equity of the case.

These conditions were not altered by the formation of the Chestatee Corporation, and the payment by the Pratts to themselves of \$25,966.67 of the so-called corporation funds, in the guise of salaries due to them from the Chestatee Corporation. The corporation, so far as justice and equity were con-

cerned, was nothing more or less than the Pratt Brothers themselves operating under a trade name.

The rule adopted by the Secretary of the Interior limiting awards to claimants, and to those who stood in the position of claimants, to \$4 per day for their personal services expended and lost in producing or in preparing to produce a war mineral, was thoroughly in accord with justice and equity.

It placed all War Minerals claimants upon the same footing, it insured a fair and equal division of the appropriations made by Congress to pay their claims, and it removed the determination of compensation from the control of those who were to receive it.

In this case the value of the services rendered by the two Pratts, in producing and preparing to produce pyrites, to the Chestatee Corporation, which they owned and controlled, was computed at the usual rate of \$4 per day for each of them, for a period of 508 days, and an item of \$4,064 on that account was included in the award made to the Pratts and the Chestatee Corporation jointly by Secretary Fall on September 28, 1922 (R. 21), and was duly paid to them.

For the trial court to require further consideration and adjustment of the item of \$25,966.67 claimed for salaries, which already had been fully considered and adjusted, was to control the discretion and decision of the Secretary with respect to a question of fact, the question of fact being the

amount which in justice and equity should be allowed in adjusting War Minerals Claim No. 1 on account of the personal services of the Pratt Brothers. This was error.

VII

The identity of the Pratt Brothers and the Chestatee Corporation

The identity of the Pratt Brothers and the Chestatee Corporation already has been referred to under the foregoing headings of this brief.

The appellant, however, wishes to emphasize this feature of the case by including it under a separate heading.

The general rule that a corporation is an entity separate and apart from its incorporators and stockholders is too well established to permit of question.

It is equally well established, however, that in an appropriate case the courts will look past a corporation to its incorporators, and, if necessary to the ends of justice, will consider the corporation and its incorporators as one and the same. This especially is true in the case of a close corporation which, like the Chestatee Corporation, was organized by only two persons who became its only officers and its sole stockholders, and who supplied its paid-in capital.

In the instant case, so far as the War Minerals Act was concerned, the Chestatee Corporation was nothing more than a trade name adopted by the

Pratt Brothers, and it is believed that the Pratts themselves realized this fact when they filed War Minerals Claim No. 1 in their own names, as well as in the name of the Chestatee Corporation.

CONCLUSION

In conclusion, the appellant again respectfully suggests that the Chestatee Corporation already has exhausted its right of action under the act of February 13, 1929, by prosecuting its original case At Law No. 76361 (Appeal No. 5194), to final judgment.

Whether this be true or not, it certainly is true that the three awards, totaling \$737,765.24, which the Chestatee Corporation has received from the Secretaries of the Interior pursuant to War Minerals claim No. 1, have fully covered all "adjustments and payments" which the appellant, Ray Lyman Wilbur, as Secretary of the Interior, has determined to be just and equitable.

Therefore, to require this appellant to make a further adjustment of War Minerals Claim No. 1 would be to control his exclusive statutory discretion with respect to a question of fact by mandamus; contrary to Section 1 of the act of February 13, 1929, and contrary to the principles of law which are applicable to the writ of mandamus.

In the event that the decision of this court should be favorable to the appellant, one further question will arise. Ordinarily in the case of reversal, if the judgment appealed from was rendered on de-

murrer, the cause is remanded to the lower court for further proceedings in accordance with the opinion and mandate of this court. In the instant case, however, the appellee's action was brought under the act of February 13, 1929, which limited the jurisdiction of the lower court to the determination of questions of law. As the lower court necessarily must accept the law of the case as determined by this court, it is respectfully requested, in the event of a decision favorable to the appellant, that the mandate of this court will direct that case At Law No. 76364 be dismissed forthwith.

Submitted by—

E. C. FINNEY,
Solicitor, Interior Department,
O. H. GRAVES,
Assistant to the Solicitor,
VICTOR H. WALLACE,
Attorney.

APR 27 1932

Henry W. Hodges

**IN THE COURT OF APPEALS OF THE DISTRICT
OF COLUMBIA**

JANUARY TERM 1932

NO. 5639

SPECIAL CALENDAR.

**RAY LYMAN WILBUR, As Secretary of the
Interior, Appellant,**

versus

**UNITED STATES OF AMERICA, ex rel. THE
CHESTATEE PYRITES & CHEMICAL
CORPORATION, Appellee.**

BRIEF ON BEHALF OF APPELEE

BY

**EDGAR WATKINS
MARION SMITH**

**WATKINS,
ASBILL & WATKINS**

Of Counsel

Address:

**1025 Citizens & Southern
National Bank Building,
Atlanta, Georgia**

IN THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA

JANUARY TERM 1932

NO. 5639

SPECIAL CALENDAR

RAY LYMAN WILBUR, As Secretary of the Interior,
Appellant,

versus

UNITED STATES OF AMERICA, ex rel. THE
CHESTATEE PYRITES & CHEMICAL CORPORATION,
Appellee.

BRIEF ON BEHALF OF APPELLEE.

STATEMENT OF THE CASE.

This is an appeal from a decision in the Supreme Court of the District of Columbia rendered on a petition for mandamus brought at the suit of the United States on the relation of the Chestatee Pyrites & Chemical Corporation against the Secretary of the Interior.

The petition raises the question of whether or not under the Acts of October 5, 1918, 40 Stat. 1009; of March 2, 1919, 40 Stat. 1272, 1274; and of November 23, 1921, 42 Stat. 322, net losses incurred for the purchase of property that had been developed prior to the stimulation period under the Act of March 2, 1919, and purchased by the relator during that period; the purchase of property directly by the relator during the stimulation period; the expenditures for taxes by the relator during the stimulation period; expenditures for legal

services during the stimulation period and expenditures for the salaries of executive officers during such period are items of net loss which the Secretary of the Interior is legally compelled to consider in determining whether or not the facts justify an award to claimants. The lower court held that the items named must be considered and issued its writ of mandamus directed to the Secretary of the Interior commanding him to proceed with the final adjustment of relator's claim as items allowable.

JURISDICTION.

The jurisdiction of this Court and of the trial court is conferred by the Act of February 13, 1929, 45 Stat. 1166; and see U. S. ex rel. Vindicator Consolidated Gold Mining Co. v. Wilbur, 47 F. (2d) 422 and U. S. ex rel. Chestatee Pyrites & Chemical Corporation v. Wilbur, 47 F. (2d) 424.

STATEMENT OF THE PLEADINGS.

The original petition prayed for a review of the final decision of the Secretary of the Interior and his predecessors in office and for a writ of mandamus.

It was alleged in that petition (Par. XI):

"Respondent (meaning the Secretary of the Interior) and his predecessors in office erred as a matter of law in not finding that salaries, property taken over in the nature of purchase of property, taxes and legal expenses lost as aforesaid by relator were losses allowable by said Act of March 2, 1919." (R. 3).

To this petition, the Secretary of the Interior responded and in his response suggested to the Court:

"That the petition for review presents only the following question, namely, was the claimant engaged in producing or preparing to produce any of the minerals named in the Act of Congress which sustained a net loss on account of expenditures in (a) purchase of property, to-wit, land; (b) payment of taxes; (c) salaries; (d) attorneys' fees or other legal services, entitled to have such losses reimbursed."

Further, the Secretary said in his response that:

“The Secretary of the Interior had decided in the negative as to each of said items as shown by copies of the various decisions of the Secretary of Interior and recommendations to the War Minerals Relief Commissioners, marked respectively Exhibits A, B, C, D and E.” (R. 4).

And respondent, the Secretary of the Interior, concluded his response by saying:

“And respondent makes no objections to but on the other hand invites a review of such questions. The petition for review presents the sole question for which petitioner prays a review herein and it is assumed that the court will confine its review to the single question raised.” (R. 4).

Thereafter, it was stipulated that respondent might withdraw his response and file an answer. This stipulation contained this clause:

“That this case remain in statu quo upon the docket of this Court until further order of the Court.” (R. 6, 29).

This stipulation, including the words just quoted, was approved by order of the Court (R. 6). Thereafter, an answer was substituted for the response and a demurrer filed by relator. (R. 5, 6).

Subsequently and in order specifically to identify the items as to which it was alleged the Department of the Interior had erred, an amended petition was filed definitely naming the items and the amounts claimed for each (R. 22). The Honorable The Secretary of the Interior filed an answer to this amendment (R. 23 to 29), but as the exhibits hereinbefore referred to state the whole facts, this answer is material on this hearing only when not in conflict with the exhibits.

APPELLANT ERRONEOUSLY CONTENDED THAT THE EXHIBITS FILED BY HIM WERE NOT PART OF THE PLEADINGS.

Facts.

Appellant in his response, referred to and “made a part” thereof, Exhibits A, B, C, D and E (R. 4). While this response

was withdrawn, it was agreed in the stipulation (R. 29)¹ as follows:

"(2) That the uncertified copies of the findings of the Secretary of the Interior and the War Minerals Relief Commission and the Assistant Commissioner of War Minerals, *attached hereto*, may be considered by the court in connection with this case, with the same effect as though they were the originals thereof."

After the time for which the case was to "remain in statu quo" (R. 6) had expired, it was discovered that the exhibits had been omitted and it was thought advisable to have them filed as was stipulated in the quotation above. For that purpose it was properly agreed on January 7, 1932, that such exhibits "may be filed and used" in this case (R. 11) and they were filed (R. 11-22). Notwithstanding the order of the trial court and the stipulations of September 21, 1929 (R. 29) and of January 2, 1932, Appellant, on January 27, 1932 (R. 23) filed a supplementary answer saying:

"The respondent says that the answer in due form which thereafter was filed with petition for mandamus in this cause, and which is now on file therein, did not include and does not include any exhibits whatever; and that this statement has express reference to the aforesaid report of Commissioner John Briar."

This claim, it is submitted, was inconsistent with the first stipulation (R. 29), with the second stipulation (R. 11) and with the order of the Court (R. 6) and his Honor, Daniel W. O'Donaghue, in his judgment specifically considered the "answer * * * as amended * * * with exhibits A, B, C, D and E." (R. 30).

THE LEGAL ISSUES HAVE ALREADY BEEN DETERMINED IN PRINCIPLE BY THIS AND THE SUPREME COURT.

Facts and Authorities.

The act of March 2, 1919 gives claimant the right to receive an award for its "net losses." "Net losses" means any

¹ This stipulation enlarges and corrects the one shown at page 6 of the record.

net losses.² Whether a particular item is a loss is a question of law for the Court. The amount of the loss is an issue of fact for the Secretary fairly and equitably to decide. This Court and the Supreme Court applied the principle that all net losses are comprehended by the statute unless "limited" or "excepted" by definite provision thereof. See the above quoted words used in *Wilbur v. United States*, 284 U. S. 231, 76 L. ed. 154, 156 and see this Court's opinion in the same case and the related *Chestatee* case, 47 F. (2d) 422, 424.

PRELIMINARY QUESTIONS OF LAW.

As stated above, it was agreed that this cause should remain in "statu quo." The purpose being to await a determination of the issues under the acts aforesaid which issues were involved in the *Vindicator* and *Chestatee* cases. Such cases were finally disposed of by the Supreme Court of the United States on December 7, 1931 (284 U. S. 231, Adv. Op. 76 L. ed. 154).

In the trial court, the learned judge suggested that as the *Chestatee Pyrites & Chemical Corporation* had brought another suit, the one referred to in the cases decided as hereinbefore stated, there might be a question of the application of the law relating to split causes of action. It was definitely agreed by the parties at the time the suit was filed and before the trial judge, that that point would not be urged and later the point was definitely disclaimed in open court by counsel for Appellant and the trial judge dismissed any consideration

² Cf. *Callahan v. United States* decided by the Supreme Court April 11, 1932, where the Court said:

"The phrase 'contrary to law' as used in the later act is unqualified and taken in its natural meaning signifies 'contrary to any law'."

thereof.³ In his brief in this case the Appellant calls attention to the point, notwithstanding the agreement, and argues that the court lacks jurisdiction of this cause.

In *Southern Pacific Railway Co. v. United States*, 186 Fed. 737, the Circuit Court of Appeals for the Ninth Circuit discussing the defense of split causes of action at pages 742 and 743 of the opinion, said:

“* * * a sufficient answer to the contention is found in the fact that the Appellant interposed no plea in bar and made no objection in the court below on the ground

³ This matter is not detailed of record. It does appear that the parties agreed (R. 30) and the Court ordered (R. 6) “That this case remain in statu quo.” In the Congressional Record of March 16, 1932, page 6322, of which this Court may take judicial notice, the Secretary, appellant here, said:

“This claimant (meaning relator here) filed two suits. One covered interest on borrowed capital, which had been denied in the consideration of the claim by the Secretary, and the other suit covered other items in dispute. By agreement of counsel the suit as to interest was made a test case.”

At page 5 of Appellant's brief reference is made to a recent award. In that award dated March 14, 1932 and signed by Appellant it appears:

“This claim is reconsidered only as to interest on borrowed capital pursuant to a writ of mandamus issued by the Supreme Court of the District of Columbia. There are other items in dispute, namely, amount to be allowed on prestimulated plant, purchase of real property, taxes, legal services, and salaries to officers, but all these appear in a suit pending in the court, and their consideration awaits final determination of the litigation. In explanation of the filing of two suits in the claim, it may be said that counsel agreed to a division of items so that a test case as to interest might be carried forward to the Supreme Court of the United States. This claim, therefore, is the one upon which the decision of the highest court as to interest was based.”

that there was a splitting of the cause of action. The defendant may, either expressly or impliedly, consent to the institution of separate actions on a single demand. *Claffin & Kimball v. Mather Electric Co.*, 98 Fed. 699, 39 C. C. A. 241. And it is held that his consent will be presumed unless he pleads the former action in bar or otherwise objects in the trial court. *Fox v. Althorp*, 40 Ohio St. 342; *McDonald v. Tison*, 94 Ga. 549, 20 S. E. 427; *Gardner v. Patten* (Com. Pl.) 15 N. Y. Supp. 324."

A similar question was raised in *United States v. Southern Pacific Railway*, 223 U. S. 565, 571, 572. The Supreme Court there declined to discuss the question saying:

"The solicitor General candidly agreed that the government should not and would not rely upon this ground";

and that Court said:

"We think that it would be inequitable for the United States now to rely upon the decree in that cause (the former case) as conclusive upon the parties in this."

Under these authorities, in the absence of a special plea in bar, the claim has no validity in law and under the agreements of counsel, it would be inequitable and unfair for the Secretary of the Interior to make the point. Even if the point could be made in this case, it would extend no further than to apply the doctrine of *stare decisis* which would mean that this Court would follow its opinion and the opinion of the Supreme Court in the former case and that is what we ask this Court to

Further in the award it was stated to have been made "without prejudice." While this award is not in the record as it is in Appellant's file and is referred to in his brief we believe we may copy therefrom.

No contention contrary to this agreement was made in the trial court.

In view of the decisions herein discussed we do not deem further details of the agreement among counsel are needed. If, however, the Court should desire the details of the stipulation in *judicio* before Judge O'Donaghue, we will move to bring up a statement thereof which we will submit for certification to the trial court.

do. (See *Bienville Water Supply Co. v. Mobile*, 186 U. S. 212, 217).

The point as finally made in the brief of appellant (notwithstanding the solemn agreement in *judicio* of his counsel that the point was not insisted on) is that the act authorizing erroneous decisions of law by the Secretary to be reviewed by a proceedings of this kind authorizes only one review because it is stated in the singular. It is to be observed that the act does not say that there shall be only one petition to review erroneous rulings and if any such limitation is added it must be read into the act since it is not expressly found therein.

The mere use of the singular as applying to a petition is not controlling for the singular is also used in stating that "any question of law" may be reviewed. Since the act says a "question of law" instead of "questions of law", a similar line of reasoning would establish that only one question of law could be reviewed in one matter; and if the Secretary had committed two errors of law the claimant would be put to an election as to which he would like to review.

Indeed, the whole theory is thoroughly fantastic. Suppose the Secretary committed an error of law which was reviewed and corrected on the claimant's petition. Suppose then the Secretary committed another error of law in the further adjustment of the claim and the time had not expired within which to review his rulings. According to the theory of the appellant's counsel the court would have no jurisdiction under any circumstances to correct the second error.

So long as the petitions are filed within the time allowed by law the question is not in any sense jurisdictional. There would seem to be no more complete method of effecting a waiver than a solemn agreement in *judicio* for such division of the matter into two petitions where counsel for both parties recognized that under the situation actually presented it was to the mutual convenience of both parties for the procedure to be handled in this manner. Such an agreement is shown and admitted in the present case. We express the matter mildly when we say that it is inequitable to permit the appellant to do by indirection what through his counsel he has agreed shall not be done at all.

EXHIBITS CONTROL ANSWER.

Notwithstanding the supplemental answer of Appellant, the exhibits are part of the record (Above p. 3,4). It is a well known and universally applied rule of pleadings that where exhibits contradict an answer, the exhibits control. Therefore, in the determination of the issues hereinafter to be discussed, the facts will be obtainable from the exhibits aforesaid. See *Stockton v. Cotton Mills*, 11 F. (2d) 618, 619, citing *Howe v. Larkin*, 119 Fed. 1005, *Jobbins v. Kendall Mfg. Co.*, 196 Fed. 216, and also see *Vital v. Kerr*, 297 Fed. 956, 962.

THE STATUTES INVOLVED.

The Act of October 5, 1918 gave relator in this case and others similarly situated, the right to receive "just compensation." This act was later supplemented by Section 5 of the Act of March 2, 1919 printed in Appendix A hereto.

The Act of November 23, 1921 evidences a legislative intention and contains some mandatory language which, it is submitted, must be considered in the construction of the Act of March 2, 1919. That Act is copied in the Appendix B hereto.

The Act of February 13, 1929 authorizes this suit.

SUMMARY OF THIS BRIEF.

1. The consideration for property purchased by relator, a corporation, within the specified conditions of the law and later lost, is an allowable loss reimbursable to claimant.

2. The consideration paid for property within the specified conditions of the statute is a loss reimbursable under the law.

3. Money paid for taxes within the specified conditions of the statute is a loss reimbursable under the law.

4. Money paid for legal services within the specified conditions of the statute is a loss reimbursable under the law.

5. Money paid for executive salaries within the specified conditions of the statute is a loss reimbursable under the law.

Other than the general assignment, the foregoing summary includes all the questions raised in the assignment of errors (for that assignment see R. 30).

GENERAL RULES APPLICABLE TO EACH ITEM CLAIMED.

1. CLAIMANT IS ENTITLED TO A LIBERAL AWARD.

The second paragraph of the Act of March 2, 1919 contains the mandate:

“The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable.”

This language, we submit, does not mean that the Secretary may disregard undisputed facts. He, of course, when there is a conflict of testimony, may finally determine what are the true facts but the language quoted above from the statute requires him so to interpret the statute and the facts as to award claimants who had surrendered rights under the compulsion of war, a liberal allowance.

In the case of *United States v. New York*, 160 U. S. 598, which was cited as authority both in this Court and in the Supreme Court and referred to by a Congressional Committee (see Appendix C), Mr. Justice Harlan, at page 620, said:

“It would be a reflection upon the patriotic motives of Congress if we did not place a liberal interpretation upon those acts, and give effect to what, we are not permitted to doubt, was intended by their passage.”

He further said:

“Liberally interpreted, it is clear that the acts * * * created on the part of the United States an obligation to indemnify the states of any costs, charges, and expenses properly incurred for the purposes expressed in the Act of 1861, the title of which shows that its object was ‘to indemnify the states for expenses incurred by them in defense of the United States.’ ”

The law under which relator claims as said by the Supreme Court in *Stewart v. Kahn*, 78 U. S. 11 Wall. 493, 504, where was construed another statute similar in purpose "is a remedial one and should be construed liberally to carry out the wise and salutary purposes of its enactment."

"Just" as was said by Mr. Justice Brewer, in *Monongahela Navigation Company v. United States*, 148 U. S. 312, 326, is an "emphatic" term, when used as in the controlling statute here, and means that the compensation

"must be a full and perfect equivalent for the property taken."

Again in the same case the learned justice said:

"And in this there is a natural equity which commends it to every one. It in no wise detracts from the power of the public to take whatever may be necessary for its uses; while, on the other hand, it prevents the public from loading upon an individual more than his just share of the burdens of the government, and says that when he surrenders to the public something more and different from that which is exacted from other members of the public, a full and just equivalent shall be returnable to him."

Webster defines "equitable" as

"Marked by due consideration for what is fair, unbiased or impartial."

The Supreme Court in *Seaboard Air Line Ry. Co. v. United States*, 261 U. S. 299, announced a universal rule and the obligation of a government to be honest when it said:

"The compensation to which the owner is entitled is the full and perfect equivalent of the property taken. *Monongahela Nav. Co. vs. United States*, supra. It rests on *equitable principles*, and it means substantially that the owner shall be put in as good position pecuniarily as he would have been if his property had not been taken. *United States vs. Rogers* (C. C. A. 8th C.) 168 C. C. A. 437, 259 Fed. 397, 400. He is entitled to the damages inflicted by the taking. *Northern P. R. Co. vs. North*

American Teleg. Co. (C. C. A. 8th C.) L. R. A. 1916 E, 572, 144 C. C. A. 489, 230 Fed. 347, 352, and cases there cited."

2. THE ISSUES HERE ARE OF LAW AND THE JUDGMENT BELOW REQUIRES APPELLANT TO OBSERVE THE LAW.

Facts and Arguments.

Much of the argument in Appellant's brief is directed to a discussion of the facts set out in his supplemental answer. As Appellant in his exhibits (R. 11-22) shows that he determined as a matter of law that the items involved in this case should not be considered, the trial court properly decided that as a matter of law he should consider them. Appellant makes here (His brief, pp. 23, 24) the argument of administrative construction which he made and which the Courts decided in the Vindicator and first Chestatee cases above.

3. ALL NET LOSSES MUST BE CONSIDERED.

Argument.

Section 5 of the Act of March 2, 1919 begins with the general authority to the Secretary as follows:

"He is hereby authorized to adjust, liquidate and pay such net losses as have been suffered, etc."

The statute then provides that the losses must have been suffered in producing or preparing to produce certain named minerals of which pyrites is one; that there must have been a request or demand of certain departments of the Government. That pyrites existed in commercial quantities and that the Government made the demand as required by statute is admitted. After this statement of the general right comes the mandate above that "the said Secretary *shall* make such adjustments and payments in each case, etc."

There are certain provisos to the statute; the first is a limitation of the appropriation which was later eliminated; the second is a limitation as to the time in which claims must be filed. This was complied with. The third is that the expenditures made and obligations incurred must have been

made and incurred in good faith; the fourth is that the investments made or obligations incurred must have been made between April 6, 1917 and November 12, 1918 and that the attempt to produce must have been a legitimate one and not a speculative one; the fifth proviso is that the Government may recover money fraudulently obtained under the act.

Insofar as these provisos make conditions for a recovery, they have been fully and admittedly complied with. There is nothing in any one of the provisos limiting net losses under the facts and circumstances of this case. It is therefore submitted that the general right granted in the statute is in no way limited by the provisos and that all net losses suffered within what the Supreme Court calls "the specified conditions" must be paid. As this particular claimant, Appellee herein, comes within the "specified conditions", the Secretary must make a just and equitable award for what the facts show are the net losses of the Chestatee Pyrites & Chemical Corporation.

4. ONLY THE CHESTATEE PYRITES AND CHEMICAL CORPORATION SEEKS RELIEF HERE.

Facts.

Appellant in his brief contends that N. P. and George L. Pratt are claimants. It is true that in the nontechnical claim originally filed their names do appear. But this suit shows that their names were dropped and only the corporation continued to prosecute the claim. (See Exhibit D, record 12; Exhibit E, record 21 and the suit as filed, record 1.)

As showing that our contention is true and that that contention has been accepted by the Secretary of the Interior, we insert here a letter from the Honorable Hubert Work, then Secretary of the Interior, which, being an official paper, of which this Court may take judicial knowledge may properly be used.

The letter is as follows:



THE SECRETARY OF THE INTERIOR

WASHINGTON

JUL 22 1925

Mr. George E. Pratt,
Cit. & Sou. Bank Building,
Atlanta, Georgia.

My dear Mr. Pratt:

Receipt is acknowledged of your letter of July 14, 1925, renewing request for consideration by the Department of losses suffered by yourself individually, by reason of indorsement and guaranty of financing contract of Chestatee Pyrites and Chemical Corporation with Ashcraft-Wilkinson Company.

The Department can not accede to this request. The proper claimant under the law is the company owning and operating the property, which in this case was the Chestatee corporation, of which you were merely a shareholder. The claim of the Chestatee corporation has been adjusted and it is believed the award paid was just and equitable. All questions in controversy between the Department and claimant company must be regarded as closed. Obviously, this must be so, having regard to the rulings of the Supreme Court of the United States in the premises.

Very truly yours,

Hubert Work

Secretary.

**THE CONSIDERATION FOR PROPERTY PURCHASED
BY RELATOR, A CORPORATION, WITHIN THE
SPECIFIED CONDITIONS OF THE LAW AND LATER
LOST, IS AN ALLOWABLE LOSS REIMBURSABLE
TO CLAIMANT.**

Facts.

Prior to the organization of claimant corporation, Nathaniel P. and George L. Pratt were operating a small plant and had expended moneys in such operations. When the corporation

was organized and after the stimulation period, the corporation bought this former plant, taking over, by contract, all the assets that had been accumulated by the Pratts. Of the total cost of this equipment and machinery so purchased and later sold to the Chestatee Pyrites & Chemical Corporation, that which was used during stimulation was given a "liberal rental or depreciation credit" but the remainder of the purchase price paid and lost, stated in the second assignment of error herein and in the decree, was not compensated for. On this point, John Briar, Assistant Commissioner of the Interior Department, said:

"Equipment and machinery purchased before stimulation but used during stimulation will be given a liberal rental or depreciation credit only. The reason why its *purchase price* will not be allowed is because the Government was in no wise responsible for its *purchase*, and the claimant at the moment he purchased the property had incurred any loss that might come, and that loss was therefore his own. To allow for its *purchase* would be in fact to allow for *the purchase of property*." (R. 19) (Emphasis supplied).

This statement by Mr. Briar was approved by the Secretary of the Interior (R. 22). These statements occur in Exhibits D and E, part of the pleadings herein, and are, of course, conclusive in this case. However even the supplemental answer shows a purchase for a consideration of stock. Appellant's answer says:

"Thereafter, and subsequent to stimulation, the Pratts turned over all of this aforesaid property to the Chestatee Corporation *in return, as respondent understands and believes, for the stock in that corporation* which they had issued to themselves, and *in part consideration* of a so-called agreement which they, themselves, made on behalf of the corporation, as its incorporators and sole stockholders, whereby *the corporation assumed such portion of the indebtedness*, which they, themselves, had incurred prior to stimulation through the purchase of the said machinery, equipment, tools, and miscellaneous items as then remained unpaid." (Emphasis supplied).

Argument.

Wherever it appears that the Secretary held as a matter of law that what he found to be purchase money was not allowed, this Court is called upon to correct the error in law leaving to the Secretary the determination of the amount of net losses, which determination he must make equitably and justly according to the facts found to exist and liberally, as hereinbefore shown is the applicable rule of law.

A similar question to this was raised in *United States v. Wilbur*, 47 F. (2d) 422 and in the first paragraph of the opinion of this Court, the question was discussed and disposed of. It makes no difference what the Secretary may say in his voluminous supplemental answer herein. He has admitted by setting up the exhibits aforesaid, that there is involved a question of law as to whether or not purchase of property is an allowable net loss.

The argument that the Appellant gave a "liberal or rental depreciation credit" for the use of purchased property does not meet the issues. He said above page 15 that the item represented "purchase price" and that "to allow for its purchase would be in fact to allow for the purchase of property." This same argument was made in and denied by this and the Supreme Court in the *Vindicator Case* above.

**THE CONSIDERATION PAID FOR PROPERTY WITH-
IN THE SPECIFIED CONDITIONS OF THE STATUTE
IS A LOSS REIMBURSABLE UNDER THE LAW.**

Facts.

In Exhibit D to the pleadings of Appellant (R. 20), it is set out that between June 18, 1917 and November 11, 1918, as agreed upon by the auditor of the Government and the auditor of the claimant, Appellee herein, there had been expenditures for real estate of \$750.00. It also appears that this amount was deducted from the amount awarded to petitioner.

Argument and Authorities.

The question is determined by this Court and the Supreme Court (see *United States v. Wilbur*, 47 F. (2d) 422 and *Wilbur*

v. United States, 284 U. S. 231, decision December 7, 1931). Although some facts are now pleaded in the rambling supplemental answer filed on behalf of the Secretary of the Interior, he admits by his exhibits that purchase of property is an issue and says that we expended for real estate \$750.00. As a matter of law, the Secretary erred in deducting this amount and the trial court correctly so held.

Appellant's argument here wholly disregards his predecessor's finding (R. 20) that the "Expenditure: June 18, 1917 to November 11, 1918 agreed upon by the auditor for the government and the auditor for the claimant" included this item and that he made "Deductions * * * Real estate, \$750.00." There is nothing in the controlling records, exhibits, which justifies Appellant saying on brief 18:

"In the instant case the claimant easily could have obtained mining timber without buying the non-mineral land upon which it grew."

If we were permitted to speculate the Court may judicially know that non-mineral mountain lands have no other value than their timber value and that the only way to get the timber is to buy the land. But this issue does not here arise.

MONEY PAID FOR TAXES WITHIN THE SPECIFIED CONDITIONS OF THE STATUTE IS A LOSS REIMBURSABLE UNDER THE LAW.

Facts.

At Record 20, the Secretary admits by his exhibit attached to his pleadings, that between June 18, 1917 and November 11, 1918, Chestatee Pyrites & Chemical Corporation expended for taxes \$834.76 and this amount was deducted from claimant's award.

Argument.

The argument in what is called the Secretary's supplemental answer herein, does not dispute the facts but argues that as a matter of law, taxes are not allowable items. It is clear that to pay taxes is an expenditure; to pay taxes for lands on which pyrites is being produced is a necessary ex-

penditure and therefore, a proper item of net losses. See taxes called an "expenditure." (R. 20).

In *Foster v. Goddard*, 66 U. S. 506, 514, 17 L. ed. 230, the Supreme Court said:

"If the charges for taxes, clerk hire and advertising claimed, are allowed, it must be under the terms, 'the actual expenses that may appertain to the goods themselves.' We are all of opinion that those terms are comprehensive enough to include these items. It was certainly not the intention of the parties that the defendant should make a donation by any *expenditure* in the business. The computation should be made as if he were engaged in no other business. The items in question are as much a part of 'the actual expenses,' appertaining 'to the goods themselves,' as storage, commission, or insurance." (Emphasis supplied).

MONEY PAID FOR LEGAL SERVICES WITHIN THE SPECIFIED CONDITIONS OF THE STATUTE IS A LOSS REIMBURSABLE UNDER THE LAW.

Facts.

The Secretary approved a finding that between June 18, 1917 and November 11, 1918, Chestatee Pyrites & Chemical Corporation expended for legal services \$585.75 and this amount was deducted from claimant's net losses. (R. 20).

Argument.

Whether or not the particular legal services were necessary is a question of fact which has been determined by the Secretary in favor of relator. Evidently he found that it was a necessary service because he set it up as an expenditure and deducted it under, we submit, an error of law. As a matter of law, he erred in refusing to consider this item and it is his duty under the judgment of the court below and of the statute, to give consideration thereto.

**MONEY PAID FOR EXECUTIVE SALARIES WITHIN
THE SPECIFIED CONDITIONS OF THE STATUTE
IS A LOSS REIMBURSABLE UNDER THE LAW.**

Facts.

This case deals with a claim for expenditures made by Chestatee Pyrites & Chemical Corporation for the salaries of its executive officers, N. P. and George L. Pratt. The Secretary, in his exhibit to his pleadings (Exhibit D, R. 20), speaking of this item, said:

“A subsistence allowance of \$4,032 for G. L. and N. P. Pratt was substituted for the salary charge of \$25,966.67 which appears in the claim. A straight salary allowance to a partner or part owner of a property would mean the granting of a profit to him. Subsistence is allowable, but if he is to receive compensation above subsistence it must come from profits earned by the corporation or partnership.”

He then, admitting (Table expenditures R. 20) that the expenditure was made, holds as a matter of law that this expenditure must be deducted.

Argument.

The fact that executive officers are also stockholders, even if they be the sole stockholders, does not deprive them of the right to receive salary and the Secretary erred in not considering this item. In the answer and brief herein of Appellant, he makes some argument about salaries but nowhere does he deny the fact that salaries were paid. The argument that salaries are profits is wholly unsound. A salary paid by a corporation is an expense deductible as such from income taxes and when paid and lost as here, it is a loss for which an award should be made. If the stockholders were not officers, some other person would have to be and there is no law requiring stockholders to work for their corporations for nothing.

The word “salary” is “never applied in describing the gain, profit, or recompense which accrues to one who is conducting a business of his own” (Roberts v. Carrithers, 180

Ky. 315, 202 S. W. 659, 661). “‘Profits’ and ‘salary’ are quite different terms.” (Hoeland v. Lange, 113 Misc. 469, 471, 184 N. Y. S. 885). “Dividends are distinguished from salary”. (Peo. v. Lynch, 254 N. Y. 427, 431, 173 N. E. 571).

The argument that the corporation and its stockholders are one is equally unsound and is answered by the Supreme Court, Klein v. Board of Tax Supervisors, 282 U. S. 19, 24, where the Court said:

“The corporation is a person, and its ownership is a non-conductor that makes it impossible to attribute an interest in its property to its members. Donnell v. Herring-Hall-Marvin Safe Co., 208 U. S. 267, 273, 52 L. ed. 481, 487, 28 S. Ct. 288.”

In Klein v. Board of Supervisors above, Mr. Justice Holmes said:

“But it leads nowhere to call a corporation a fiction. If it is a fiction it is a fiction created by law with the intent that it should be acted on as if true.”

There is an almost limitless amount of authority that could be cited to the proposition that the courts will treat a corporation as a separate, distinct, entity, as separate and distinct from its stockholders (even where all of its stock is held by one or two individuals) as from anyone else. If the court cares to pursue the matter widely a complete review of the subject, and of the cases, will be found in the new edition of Fletcher Cyclopedia Corporations, Vol. 1, p. 84, et seq. under the heading “Corporation as Distinct from Members”.

There are, of course, instances in which the corporate entity will be disregarded, but they are exceptions, and it is not to be done at the mere whim of counsel. There is at the present time no confusion as to when the courts will look through the corporate entity. It is only when to do so is necessary to prevent fraud or the violation of law—where the corporation is used as a blind or instrumentality to justify a wrong.

Any such loose disregard of the separate identity of the corporation as is suggested in the present case would merely abrogate the general rule. See a discussion of the subject by

Machen under the title "Corporate Personality", 24 *Harv. Law Rev.* 355.

"Except in cases where it is necessary to circumvent fraud, or in cases which proceed on the theory of estoppel, or those where it is sought to take possession of property ostensibly belonging to a corporation entirely controlled and owned by the principal debtor, for the purpose of protecting the creditors of the latter, as well as the former, it will be found that the instances are rare indeed where the general and settled rule of separate corporate entity is disregarded." *Peckett v. Wood*, 234 Fed. 833, 838.

"The corporation will be regarded as a legal entity as a general rule, and the courts acting cautiously and only when the circumstances justify it, will ignore the fiction of corporate entity, where it is used as a blind or instrumentality to defeat public convenience, justify wrong, or perpetrate a fraud, and will regard the corporation as an association of persons". *Majestic Co. v. Orpheum Circuit* (C. C. A.) 21 Fed. (2nd) 554.

Quoted with approval *In re: O'Brien*, 40 Fed. (2d) 554.

There is one practical consideration that is fairly apparent in this record which should be mentioned here. In actual fact, a corporation and its stockholders are not identical. The corporate property cannot be treated as the property of the stockholders, because, in fact, it is not always theirs. The proceeds of this claim, if allowed to the corporation, cannot be treated as if allowed to the Pratts, because the court is not justified under the record in saying that the proceeds of the claim or any part thereof will go to the Pratts. All of this follows from the fact that *corporate creditors must be first considered*.

The memorandum of the Assistant Commissioner, Exhibit D to the Response, shows that the Chestatee Pyrites Company was without funds and that its operations in response to Government stimulation were on borrowed capital. (Tr. pp. 13-14).

The Assistant Commissioner (R. 17) said:

"Always, too, there was a realization that claimant in responding to Government request will suffer great financial loss, notwithstanding the generous provisions of the War Minerals Relief Act".

The ultimate parties at interest, therefore, under this claim are those who, were constrained by the Government to lend to the corporation the funds used in complying with the appeals from the Secretary of the Interior to produce Pyrites as a patriotic service to aid in the crisis of a great war.

The Secretary, Appellant here, set up as an Exhibit to his pleadings findings, stating:

"The activities of the Government to induce Ashcraft and Wilkinson to finance claimant, so that war needs might be met quickly and in large measure, were personal, direct, and effective. The fact that Secretary Lane, who himself had a part not only in the stimulation of claimant but, through suggestion, in the financing, recognized that Ashcraft and Wilkinson had performed a service to the Government, is evidence of that service." (R. 14).

To disregard the corporate entity and set up the Pratts as the real parties at interest is to proceed on a theory directly contrary to the facts. It arrives not at truth, justice and equity, but at the contrary. In a word—there is no such showing in this case as would justify the court in departing from the usual practice of treating a corporation as a separate personality. The fundamental error of the Appellant in dealing with the claims for salaries and for property purchased by the Pratts before stimulation and sold to the corporation after stimulation, is that he treated the corporation and the Pratts as one and the same. This is an error of law which the court is now asked to correct.

CONCLUSION.

The facts as stated in the Act of February 13, 1929 are for determination by the Secretary but it would be an unjust implication to suggest that he would now change findings

made in 1922 which he set up as exhibits to his response and stipulated should be exhibits to his answer.

The only confusion in this record grows out of Appellant's efforts to avoid what we believe are the legitimate conclusions from proper stipulations as to the split cause of action and as to the exhibits. If relator has relied too confidently on these agreements, it should not suffer for its faith in Appellant's counsel; and the suggestion of Appellant in the Conclusion to his brief herein that this Court will direct a dismissal of this cause by the lower Court would be inequitable, whatever views this Court may have of the law.

In view of the broad language of this Court and the Supreme Court when questions of the meaning of the statutes here involved were before such courts, it is surprising that again questions settled in principle by your former decision should be brought here.

For fourteen years claimant, supported by the Congress and the Courts, has been endeavoring to recover its net losses. It has been met with all kinds of technical contentions and with every possible delay. If this appeal were brought by a private individual, it might be said of him with propriety that he was guilty of contumaciousness. Of course the head of a great department of the Government cannot personally know all that is being done in his name but it is respectfully submitted that this is an unusual case and should be so considered and if the procedure of this court notwithstanding the general rule so authorizes, the costs of this appeal should be adjudged against the Appellant.

Respectfully submitted,

EDGAR WATKINS,
MARION SMITH.

WATKINS, ASBILL
& WATKINS,
Of Counsel.

Address: 1025 Citizens & Southern
National Bank Building,
Atlanta, Georgia.

APPENDIX A.

Section 5 of the Act of March 2, 1919, as Passed.

"Sec. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the act of Congress approved October fifth, nineteen hundred and eighteen, entitled 'An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply'.

"The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses *incurred* by said Secretary, including personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of \$8,500.00: *And provided further,* That said Secretary shall

consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this act: *And provided further*, That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the *expenditures so made or obligations so incurred* by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further*, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or *obligations were incurred* subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

“That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

“That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals

on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

“Approved March 2, 1919.”

APPENDIX B.

ACT OF NOVEMBER 23, 1921.

(Public—No. 99—67th Congress)

(S. 843).

AN ACT to amend section 5 of the Act approved March 2, 1919, entitled "An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the act approved March 2, 1919, entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: "*Provided, That* all claimants whom in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation, or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation of said act.

"If in claims passed upon under said act awards have been denied or made on rulings contrary to the provisions of this amendment or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts."

Approved November 23, 1921.

APPENDIX C.

Respondent and others being dissatisfied with the administration of the Act of 1919, appealed to the Congress and H. J. Res. 170 was introduced and hearings had thereon and a report of said hearings was printed as,

HEARINGS BEFORE THE COMMITTEE ON MINES AND MINING

House of Representatives

EXCERPTS

Sixty-sixth Congress

Second Session

on

H. J. Res. 170.

WASHINGTON

Government Printing Office

1920

After those hearings were completed, and on March 25, 1920, Mr. Garland, from the Committee on Mines and Mining, submitted to the Congress the report on the Amendment to the War Minerals Act. This report criticised severely the former commission for its illiberal treatment of claimants, and said:

Findings of Committee.

“The Committee is of the opinion that the Commission erred in its interpretation of the legislative intent, its interpretation and application of the provisions of the Act and the application of the provisions of the law to the facts.”

The report then copied portion of the Act of March 2, 1919, and said:

“The language of the Act as above quoted is clear, and if interpreted as the courts of the country have repeatedly held such statutes should be interpreted, the committee is of the opinion that the purpose of Congress can be fully carried out and a ‘just and equitable’ settlement can be had of every legitimate claim. For the correct rule of interpretation and application of such a statute see *United States v. Dixon* (15 Peters), *United States v. Union Pacific Railroad Co.* (91 U. S.), *United States v. State of New York* (160 U. S.), *Smith v. Townsend* (140 U. S.), *District of Columbia v. Washington Market Co.* (108 U. S.), *McClure v. United States* (115 U. S.), *Monongahela Navigation Co. v. United States* (148 U. S.), *Stewart v. Kahn* (78 U. S.). For the reasons above stated the committee has not thought it necessary to amend the original act.”

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